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Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda item 10
Technical assistance and capacity-building

Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events in August 2014

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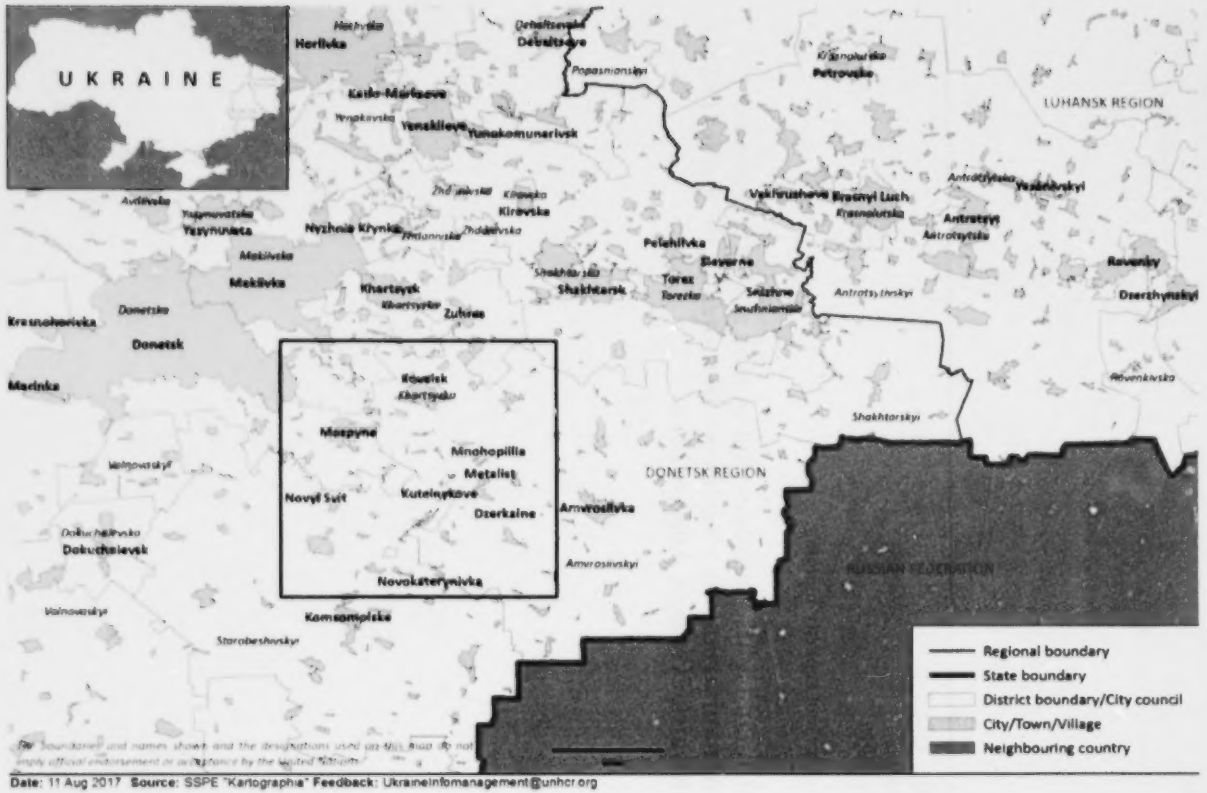
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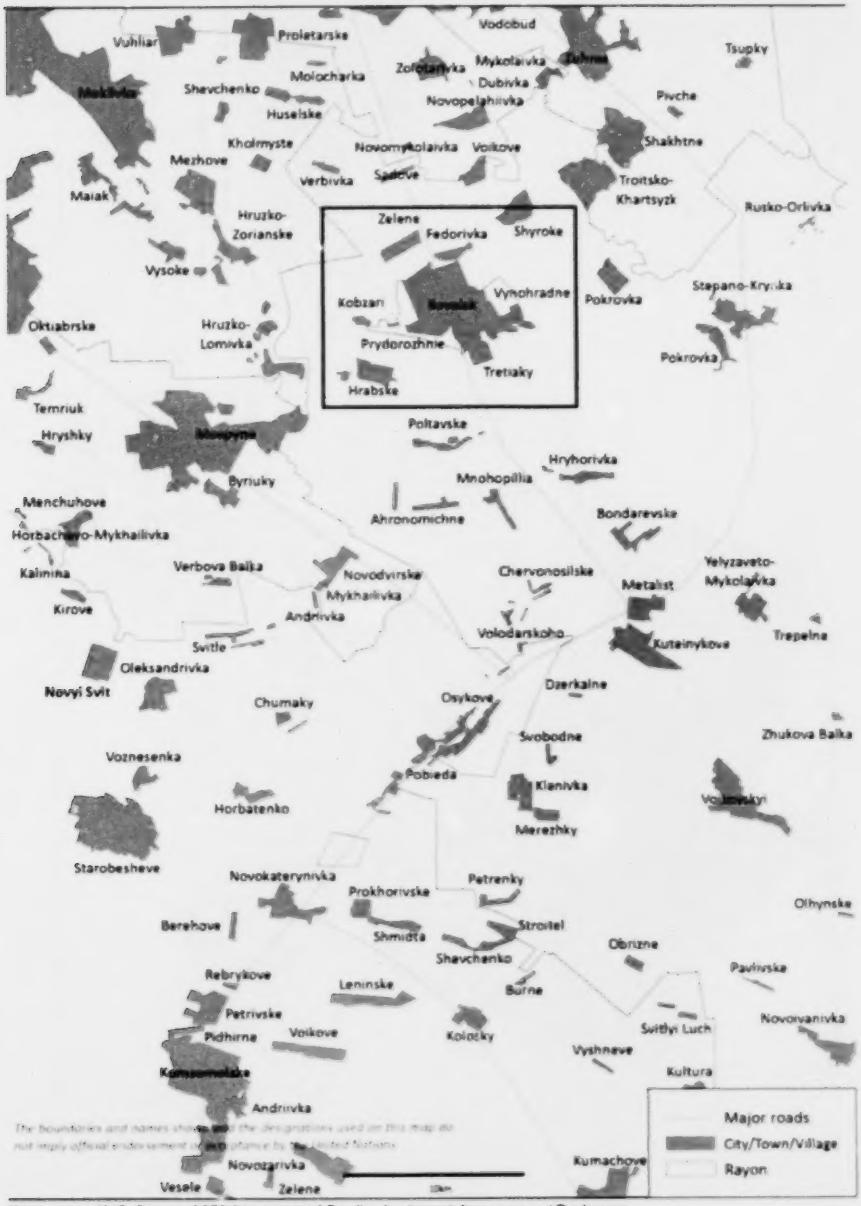
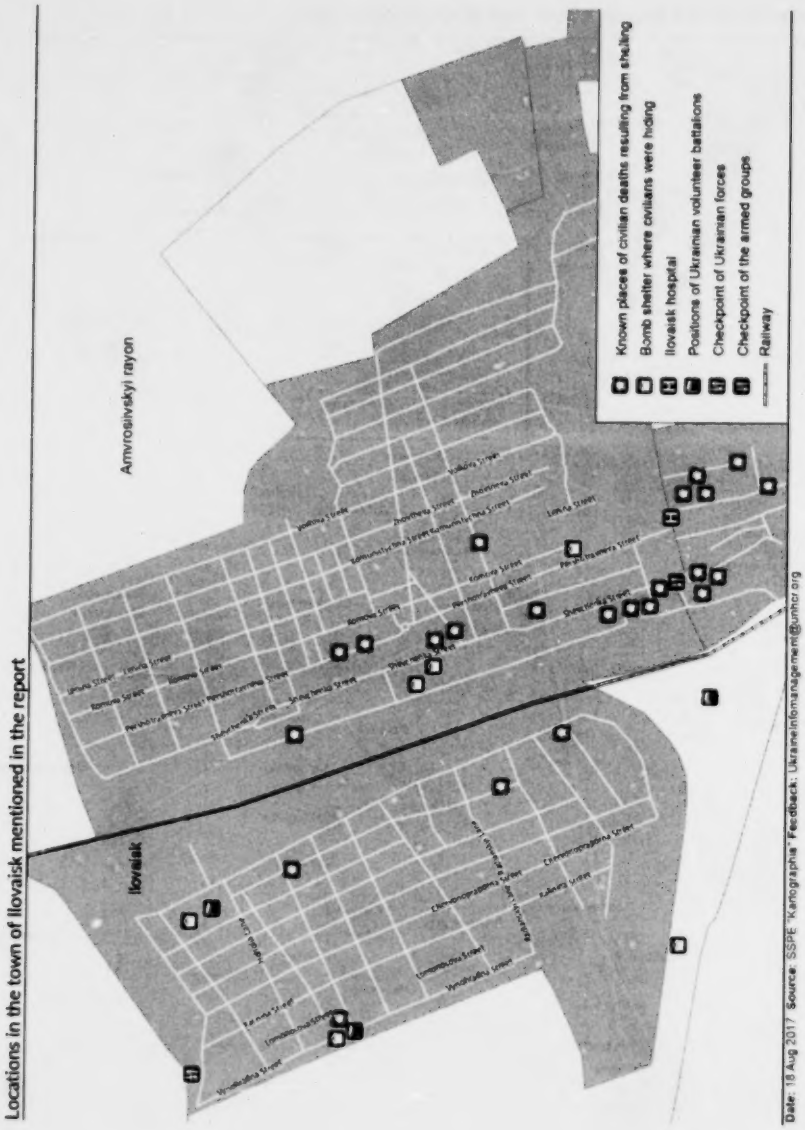
The area where the Ilovaisk events took place in August 2014



Date: 11 Aug 2017 Source: SSPE "Kartographia" Feedback: Ukraineinfomanagement@unhcr.org


Locations in the town of Ilovaisk mentioned in the report
Amvrosiivskyi rayon
Ilovaisk
Known places of civilian deaths resulting from shelling
Bomb shelter where civilians were living
Ilovaisk hospital
Positions of Ukrainian volunteer battalions
Checkpoint of Ukrainian forces
Checkpoint of the armed groups
Railway
Date: 18 Aug 2017 Source: SSPE "Kartographia" Feedback: Ukraineinformanagement@unhcr.org

I. Executive summary

1. This report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) covers the multifaceted, interrelated and mutually reinforcing human rights violations and abuses and international humanitarian law violations, committed against civilians and persons hors de combat during the Ilovaisk events in August 2014, in particular, the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)[1] documented numerous violations and abuses of the rights to life, liberty, security and physical integrity during these events.

2. OHCHR considers the Ilovaisk events emblematic of human rights violations and abuses and international humanitarian law violations that have been repeatedly committed during the conflict in eastern Ukraine: shelling of residential areas resulting in civilian casualties, killings of civilians and other protected persons, unlawful detentions, enforced disappearances and torture.

3. A non-exhaustive summary of relevant military developments is provided in the report for contextual purposes only. It does not aim at qualifying the nature of the armed conflict.[2]

4. From early April 2014, OHCHR observed a rapid escalation of violence in eastern Ukraine. Groups of armed men unlawfully seized public buildings, as well as police and security facilities, in cities and towns across the Donetsk and Luhansk regions, in a well-organized and coordinated fashion.[3] On 14 April 2014, the Government of Ukraine launched

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[1] Deployed on 14 March 2014 at the invitation of the Government of Ukraine, HRMMU is mandated to "monitor the human rights situation in the country, with particular attention to the Autonomous Republic of Crimea, Eastern and Southern regions of Ukraine, and provide regular, accurate and public reports by the High Commissioner on the human rights situation and emerging concerns and risks". HRMMU is also mandated to "recommend concrete follow-up actions to relevant authorities of Ukraine, the UN and the international community on action to address the human rights concerns, prevent human rights violations and mitigate emerging risks".

[2] On 24 April 2018, the Law of Ukraine №2268-VIII "On Particular Aspects of Public Policy Aimed at Safeguarding the Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk regions of Ukraine" entered into force. The Law refers to the Russian Federation's armed aggression against Ukraine and formally assigns the areas in eastern Ukraine that are not controlled by the Government as under the occupation of the Russian Federation.
According to the findings of the Office of the Prosecutor of the International Criminal Court (ICC) in the course of its preliminary examination into the situation in Ukraine, "it seems that by 30 April 2014 the level of intensity of hostilities between Ukrainian government forces and antigovernment armed elements in eastern Ukraine reached a level that would trigger the application of the law of armed conflict". Information available to the ICC Office of the Prosecutor also "indicates that the level of organisation of armed groups operating in eastern Ukraine, including the "LPR" and "DPR", had by the same time reached a degree sufficient for them to be parties to a non-international armed conflict". The ICC Office of the Prosecutor also believes that "additional information, such as reported shelling by both States of military positions of the other, and the detention of Russian military personnel by Ukraine, and vice-versa, points to direct military engagement between Russian armed forces and Ukrainian government forces that would suggest the existence of an international armed conflict in the context of armed hostilities in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict". For the purpose of determining whether the otherwise non-international armed conflict could be international in character, the ICC Office of the Prosecutor "is also examining allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine" (International Criminal Court, Report on Preliminary Examination Activities 2016, 14 November 2016, paras. 168-170, and Report on Preliminary Examination Activities 2017, 4 December 2017, paras 94-95).
Since 2014, the Government of the Russian Federation and its senior officials, including President of the Russian Federation Vladimir Putin and Minister of Foreign Affairs Sergey Lavrov, have been reiterating on various occasions that the Russian Federation does not consider itself a party to the armed conflict in eastern Ukraine. The Government of the Russian Federation has also consistently denied the presence of regular Russian troops on the territory of Ukraine during the entire conflict period.

[3] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, 19 September 2014, para. 9.

a security operation[4] to re-establish control over territory controlled by armed groups, deploying units of the Ukrainian Armed Forces supported by volunteer battalions.[5] The hostilities with the armed groups, which from April 2014 were bolstered by the influx of foreign fighters, including citizens of the Russian Federation,[6] rapidly escalated to the level of an armed conflict. By the end of July 2014, the armed groups of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic'[7] controlled considerable parts of both regions, including parts of the State border with the Russian Federation.

5. Having regained control over a number of towns and villages in the conflict zone, and having advanced towards the State border with the Russian Federation in Donetsk region in June and July 2014,[8] Ukrainian forces [9] launched an operation to regain control over the town of Ilovaisk (Donetsk region, 40 kilometres south-east of Donetsk city) in early August. By mid-August, they took control of the villages surrounding Ilovaisk. From 18 to 28 August 2014, Ukrainian volunteer battalions fought the armed groups positioned in the town, and took partial control of it. During this time, the town was divided into areas controlled by Ukrainian forces and those controlled by armed groups. By 27 August 2014, Ukrainian forces were surrounded by the armed groups which, according to the Government of Ukraine, were reinforced by troops and weaponry from the Russian Federation. The Office of the Prosecutor of the International Criminal Court reported that the intensity of fighting in Ilovaisk has been attributed to "alleged corresponding influxes of troops, vehicles and weaponry from the Russian Federation to reinforce the positions of the armed groups".[10]

6. During the morning of 29 August 2014, having rejected proposals of armed groups and reportedly Russian Federation military to withdraw without their weapons, Ukrainian forces began to leave Ilovaisk in a southerly direction. Ukrainian soldiers maintain that as they retreated, they were attacked by regular troops of the Russian Federation.[11] By 31 August, at least 366 Ukrainian soldiers were killed and at least 429 were wounded; [12] hundreds others were captured. On 31 August and 1 September, the majority of captured Ukrainian soldiers, including those wounded, were released to Ukrainian forces. Approximately 300 captured Ukrainian soldiers were transferred to the control of armed groups of the 'Donetsk people's republic'. Until late 2014, most of them were released as a part of so-called 'exchanges'. Some 10 remained in captivity until mid-2015, when they were released. One soldier captured around Ilovaisk remained in detention until he was released on 27 December 2017.[13]

7. Hostilities in Ilovaisk and the surrounding villages had a devastating impact on the civilian population. In Ilovaisk, 600 out of 1,800 individual houses were destroyed and 116 multi-storey buildings were damaged. For three weeks, residents of Ilovaisk did not have electricity, water and gas due to damages caused by the hostilities. During this period, there

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[4] Referred to as 'anti-terrorist operation' (or 'ATO') by the Government of Ukraine.

[5] As security situation in the east of Ukraine deteriorated in April 2014, residents of Dnipropetrovsk, Donetsk, Luhansk and other regions united into groups of volunteers, which became known as "volunteer battalions". While the chain of command and subordination of these elements were loose in June 2014, these volunteer battalions were formally integrated into the structures of the Ministry of Internal Affairs and the Ministry of Defence of Ukraine.

[6] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, 19 September 2014, para. 14; and OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 17 September 2014, para. 3.

[7] Hereinafter referred to as 'Donetsk people's republic' and 'Luhansk people's republic'.

[8] OHCHR report on the human rights situation in Ukraine covering the period from 8 June to 15 July 2014, para. 10.

[9] For the purposes of this report, OHCHR uses "Ukrainian forces" to refer to the Armed Forces of Ukraine, National Guard of Ukraine, National Police of Ukraine, State Border Guard Service of Ukraine, Security Service of Ukraine and volunteer battalions.

[10] International Criminal Court, Report on Preliminary Examination Activities 2016, 14 November 2016, para. 168, and Report on Preliminary Examination Activities 2017, 4 December 2017, para. 92.

[11] See para. 78 below.

[12] See para. 81 below.

[13] See para. 124 below.

were also no functioning medical facilities. The shelling of Ilovaisk and two nearby villages resulted in the death of at least 36 civilians (18 men and 18 women). Monitoring conducted by OHCHR indicates that parties to the conflict employed explosive weapons in populated areas without complying with the principles of distinction, proportionality and precaution.[14]

8. OHCHR received consistent reports that during the Ilovaisk events, parties to the conflict were involved in the killing of civilians and persons *hors de combat*. Witness accounts and/or available forensic data suggest that these killings were not committed on a massive or systematic scale. OHCHR documented the killing of four civilians in Ilovaisk two of which were perpetrated by Ukrainian battalions. One civilian was killed by shelling while in the custody of Ukrainian battalions. OHCHR received allegations of the killing of three Ukrainian soldiers after they surrendered on 29 August 2014. Allegations also suggest that some Ukrainian soldiers wounded in combat were subsequently killed despite being *hors de combat*. OHCHR also documented the enforced disappearance of a male military doctor, which may have led to his death.[15]

9. OHCHR documented allegations that Ukrainian forces in Ilovaisk and surrounding villages subjected men, aged 30 to 66 years old, to torture or ill-treatment. The victims were suspected of either being members of, or otherwise affiliated with, armed groups. In Ilovaisk, from 18 to 28 August 2014, the majority of victims were held in school No. 14 by the "Donbas" volunteer battalion fighting within the Ukrainian forces. The conditions in which the men were held may amount to ill-treatment. The victims were subjected to beatings. To date, OHCHR has documented cases of thirteen individuals tortured or ill-treated in Ilovaisk and surrounding villages.[16]

10. Ukrainian soldiers, including those wounded, who were captured on 29 and 30 August 2014 during their retreat from Ilovaisk, were kept for two days in makeshift collection points located in open fields near the zone of hostilities. The treatment of these *hors de combat* soldiers was apparently determined by the individual unit that had captured them and therefore varied. Some men were treated in a manner that they described as "decent" while others were subject to ill-treatment and torture. Many reported having been denied medical aid and water. At least four wounded Ukrainian soldiers died due to the non-provision of adequate medical assistance.[17]

11. On 31 August and 1 September 2014, some 300 captured Ukrainian soldiers were placed in three detention facilities in Donetsk city and in one in Snizhne, under the control of the armed groups. The conditions of detention were reported to be degrading and humiliating, amounting to ill-treatment. The captured soldiers were divided into two groups: elements of the Ukrainian Armed Forces (professional and those drafted) and members of volunteer battalions. The latter were reportedly held in worse conditions. Torture was used during interrogations of captured soldiers to extract information, to punish them for joining a volunteer battalion or to compel them to join the armed groups. The most common forms of torture were beatings, mock executions and threats of physical violence. Members of the volunteer battalions who originated from Donetsk, Luhansk and Kharkiv regions were deemed "traitors" by armed groups and subjected to harsher physical treatment.[18]

12. Four years after the Ilovaisk events, limited steps have been taken by the parties to the conflict to investigate allegations of human rights violations and abuses and international humanitarian law violations, particularly those committed against civilians. The Prosecutor General's Office of Ukraine is conducting an investigation into violations and abuses committed against Ukrainian soldiers in Ilovaisk, such as summary executions, torture and ill-treatment as a part of two complex criminal proceedings that cover the whole period of the armed conflict in the east of Ukraine. One of the proceedings is investigating members of the 'Donetsk people's republic' and 'Luhansk people's republic' for "wide-scale and systematic violations of laws and customs of war" committed against civilians

[14] See paras. 38-46 below.
[15] See paras. 47-55 and 81-89 below.
[16] See paras. 56-70 below.
[17] See paras. 90-92 below.
[18] See paras. 93-127 below.

and captured soldiers in the context of the armed conflict in the east of Ukraine. A second investigation has been opened against State officials and those serving in the Armed Forces of the Russian Federation for "launching and waging aggressive war against Ukraine which caused death of people and other grave consequences". The conduct of the Ukrainian forces is not within the scope of either investigation.[19]

13. OHCHR recalls that accountability and justice are essential elements to fostering lasting peace and reconciliation. It is therefore critical to mobilize the national and international criminal justice systems to impartially, objectively, thoroughly and promptly address all human rights violations and abuses and international humanitarian law violations committed by all parties to the conflict to ensure that those responsible are held accountable, regardless of their affiliation. OHCHR reminds that all victims of human rights violations and abuses should have equal, effective and prompt access to justice and be provided with effective remedies, including access to rehabilitation and reparation mechanisms.

II. Methodology

14. The report focuses on human rights violations and abuses and international humanitarian law violations as they affected civilians and persons *hors de combat* during the Ilovaisk events in August 2014, in particular violations and abuses of the rights to life, liberty, security and physical integrity.

15. The report examines human rights violations and abuses and international humanitarian law violations committed in and around Ilovaisk between 1 and 31 August 2014, as well as the situation of individuals deprived of their liberty from 1 August to 31 December 2014 in the context of the Ilovaisk events.

16. The geographic scope of the report covering the events from 1 to 31 August revolves around the town of Ilovaisk and nearby villages, namely Ahronomichne, Chervonosilske, Fedorivka, Hrabske, Hruzko-Lomivka, Kobzari, Mnohopillia, Novokaterynivka, Osykove, Pivche, Pobeda, Pokrovka, Poltavske, Prydorozhne, Shakhtne, Shyroke, Troitske-Khartsyzk, Voikove, Vynohradne and Zelene. Concerning the situation of individuals deprived of their liberty in the context of the Ilovaisk events as of August 2014, the report covers all localities where these individuals were known to be held, including Ilovaisk and Donetsk.

17. The report documents accounts of the multifaceted, interrelated and mutually reinforcing human rights violations and abuses and international humanitarian law violations that occurred during these events but it is not intended to be an exhaustive record of the Ilovaisk events. Relevant military developments are provided in the report for contextual purposes only.

18. This report is based on information that HRMMU collected through more than 80 interviews with victims and witnesses and other sources. Both men and women were interviewed. The information was cross-checked and corroborated from several sources, including materials confidentially shared with HRMMU; official records; open-source documents and video, audio and photo materials (including those recorded by perpetrators); forensic reports; criminal investigation materials; court documents; and other relevant and reliable sources. When possible, HRMMU visited sites of incidents. Incidents highlighted in the report are based on at least one credible first-hand source. Patterns documented in the report are based on several credible reports of individual incidents which, together, appear consistent with, and have been corroborated by the overall body of credible information collected.

[19] According to the Office of the Prosecutor General of Ukraine, alleged crimes perpetrated by Ukrainian soldiers in regard to civilian population during Ilovaisk events have not been investigated because military prosecutors did not receive applications or information on such crimes and, therefore, there were no grounds to initiate criminal cases.

19. Guided by the "do no harm principle", HRMMU included the incidents only where sources granted their informed consent, and upon an assessment that the disclosure of information would not expose them to any protection risks.

20. Due to the scale and intensity of hostilities and other constraints, HRMMU did not have access to Ilovaisk until 2016. This complicated the process of interviewing potential sources, as the memories of victims and witnesses had faded, particularly regarding specific dates of events, leading to inconsistencies which called for additional corroboration. Furthermore, it was difficult to identify eyewitnesses of the events, as many local residents had left Ilovaisk and the vicinity at the time of heightened hostilities, or had spent most of the time in basements and other improvised bomb shelters. Some violations and abuses were committed without witnesses and thus were difficult to corroborate. Finally, several people refused to talk to OHCHR for fear of reprisals, trauma associated with these events, or other reasons.

21. In many cases it was difficult for OHCHR to ascertain whether the violations and abuses were committed following orders, due to a sense of impunity, or poor command and control of forces at the time. In a number of cases, victims had difficulties identifying the specific battalion or armed group to which the perpetrators belonged. In some villages, this may have been due to the regular rotation of battalions.

III. Legal framework

22. HRMMU analyzed factual events in the light of relevant norms and standards of international human rights law, international humanitarian law and international criminal law.[20]

23. International human rights law, in the form of ratified treaties and customary norms, applied throughout Ukraine for the whole period covered by this report.[21] While non-State actors, including armed groups, cannot become parties to international human rights instruments, it does not preclude them from being subject to human rights obligations under customary international law. It is increasingly accepted that those exercising government-like functions and effective control over a territory must respect human rights norms and standards when their conduct affects the human rights of individuals under their control.[22]

24. Despite lacking effective control over certain parts of its territory, the Government of Ukraine retains the obligation to uphold international human rights law, document and investigate effectively, promptly, thoroughly and impartially allegations of human rights violations and abuses, and ensure that perpetrators are held accountable. In line with the General Assembly Resolution 60/147, setting out Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, States should provide alleged victims of human rights or humanitarian law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation.[23] States should endeavour to establish national programmes

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[20] Ukraine signed the Rome Statute of the International Criminal Court in 2000, but has not ratified it. In 2016, the Parliament of Ukraine adopted amendments to the Constitution of Ukraine, which allow for ratification of the Rome Statute; these amendments will enter into force in 2018. The Office of the Prosecutor of the International Criminal Court opened a preliminary examination of the situation in Ukraine on 25 April 2014. On 8 September 2015, under article 12(3) of the Rome Statute, the Government accepted the jurisdiction of the International Criminal Court with respect to alleged crimes committed on its territory since 20 February 2014 with no end date.

[21] Ratification: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=183&Lang=EN.

[22] See OHCHR report 'Accountability for killings in Ukraine from January 2014 to May 2016', para. 12, footnote 16.

[23] See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 3.

for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.[24] States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations.[25]

25. International humanitarian law regulates the conduct of parties to an armed conflict, the means and methods of warfare, and protects those who do not or who no longer directly participate in hostilities. In situations of armed conflict, all parties[26] to the conflict are bound by the applicable rules of international humanitarian law, whether customary or treaty-based. International humanitarian law imposes corresponding obligations on all parties, independent of the commitment of the other parties.[27]

Conduct of hostilities and treatment of civilians and persons hors de combat

26. The fundamental principle of international humanitarian law that all parties to a conflict have an obligation to distinguish between civilians and combatants applies in both international and non-international armed conflict.[28] Parties to a conflict may direct attacks against combatants or military objects and must not make the civilians and civilian population the object of an attack. Civilians are persons who are not directly participating in hostilities at the time of attack and are not members of the armed forces of a party to the conflict.[29]

27. Important rules of the conduct of hostilities, which include attacks, defensive and responsive military actions, are the prohibition of indiscriminate attacks,[30] proportionality[31] and precaution.[32] It may amount to a war crime to intentionally target civilians not taking direct part in the hostilities in both international and non-international armed conflict.[33] Allegations concerning an attack against civilians must be investigated, and where there is sufficient evidence, persons responsible for the commission of the offence or for ordering the offence must be prosecuted.[34]

28. International humanitarian law requires that persons *hors de combat*[35] are treated humanely. Wounded persons *hors de combat* are entitled to medical care and protection in

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[24] Ibidem, principle 16.

[25] Ibid.,principle 17.

[26] The provisions of common Article 3 of the four Geneva conventions bind all parties to non-international armed conflicts, including organized non-State armed groups. Common Article 3, which reflects elementary considerations of humanity, is supplemented by a number of other treaty provisions and by customary humanitarian law governing the conduct of parties to non-international armed conflicts.

[27] Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, Customary International Humanitarian Law: Volume 2: Rule 140. The obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity.

[28] ICRC, Customary International Humanitarian Law: Volume 1: Rules (Cambridge, Cambridge University Press, 2005), Rule 1 (applicable to both types of conflict). In relation to international armed conflict, the principle of distinction is codified in Additional Protocol I: articles 48; 51(2). Although not explicitly stated, the same rule is implicit in Additional Protocol II art. 13(2) which relates to non-international armed conflict.

[29] ICRC, Customary International Humanitarian Law: Volume 1: Rules, rule 5. Note that the presence within a civilian population of non-civilians does not deprive the population of its civilian character (recognized as customary international law: International Criminal Tribunal for the former Yugoslavia, Prosecutor v Kordić and Čerkez, Case No. IT-95-14/2, Appeals Chamber, Judgment of 17 December 2004, para. 97); however, the population must remain predominantly civilian.

[30] ICRC, Customary International Humanitarian Law: Volume 1: Rules, Rule 11.

[31] Ibidem, Rule 14.

[32] Ibid, Rule 15.

[33] Rome Statute, Article 8 (2) (b) (i) and Article 8(2)(e)(i).

[34] ICRC, Customary International Humanitarian Law: Volume 2: Rules, Rules 158 and 150.

[35] Rule 47 of customary international humanitarian law defines the person hors de combat as (a) anyone who is in the power of an adverse party; (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape. Common

both international and non-international armed conflicts.[36] Customary international humanitarian law explicitly provides that "the wounded and sick shall be collected and cared for".[37]

Right to life

29. The right to life is a fundamental human right guaranteed in a variety of universal and regional human rights instruments which Ukraine has ratified.[38] It is a non-derogable human right that cannot be suspended, even at times of a public emergency.[39]

30. International humanitarian law prohibits a party to an international or a non-international armed conflict from wilfully killing or murdering civilians,[40] medical or religious personnel, or other persons taking no active part in hostilities or no longer doing so. Such acts are recognized as a war crime [41]

31. Both international human rights[42] and humanitarian law[43] require States to investigate extrajudicial, summary or arbitrary killings and murders, punish perpetrators and provide effective remedies to relatives. Relatives of victims are entitled to reparation, including adequate compensation, and the State must take measures to prevent further extrajudicial, summary or arbitrary executions or killings.[44]

Prohibition of torture and ill-treatment

32. Core international human rights instruments, to which Ukraine is a party,[45] expressly prohibit torture and other cruel, inhuman or degrading treatment. The prohibition of torture and other cruel, inhuman or degrading treatment is absolute; and derogation from it is not permitted,[46] whether in a state of war or a threat of war, internal political instability or any

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Article 3 to the Four Geneva Conventions provides that persons hors de combat "shall in all circumstances be treated humanely".

[36] Guarantees of provision of medical care and attention to wounded persons hors de combat are enshrined in Article 10 of the Additional Protocol I to the Geneva Conventions relating to the protection of victims in the international armed conflict and Article 7 of the Additional Protocol II to the Geneva Conventions relating to the protection of victims in the non-international armed conflict.

[37] ICRC, Customary International Humanitarian Law: Volume 1. Rules 110.

[38] Article 6 (1) of the International Covenant on Civil and Political Rights, Article 6 of the Convention on the Rights of a Child, Article 10 of the Convention on the Rights of Persons with Disabilities, Article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[39] International Covenant on Civil and Political Rights, Article 4.

[40] Common article 3 of the Geneva Conventions; Geneva Convention I, article 50; Geneva Convention II, article 51; Geneva Convention III, article 130; Geneva Convention IV, article 147; Additional Protocol I, articles. 41; 75(2)(a)(i) and 85(3)(e); Additional Protocol II, articles. 4(1) and 4(2)(a).

[41] Rome Statute, Article 8(2)(a)(i) and Article 8(2)(c)(i).

[42] United Nations Human Rights Committee, general comment No. 6, para. 3. See also Inter-American Court of Human Rights, Myrna Mack Chang v Guatemala, Judgment of 25 November 2003, Series C, No. 101, para. 153.

[43] ICRC, Customary International Humanitarian Law: Volume 1: Rules, Rule 158. See also, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 4.

[44] International Covenant on Civil and Political Rights, Article 2(3). United Nations Human Rights Committee, general comment No. 6, para. 3.; general comment No. 31, para. 15 and 16. Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions, principles 9, 18, and 20. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[45] International Covenant on Civil and Political Rights (ICCPR) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[46] OHCHR notes the notification by the Government of Ukraine to the United Nations Secretary-General on 20 October 2015, that the application and implementation by Ukraine of its obligations under 16 treaties, including the Convention against Torture, "is limited and is not guaranteed" on territory deemed to be occupied and uncontrolled, and that this situation will continue to apply until

other public emergency.[47] International humanitarian law also prohibits torture in both an international and non-international armed conflict.[48] Under the Rome Statute, torture and cruel, inhuman or degrading treatment may amount to a war crime or a crime against humanity in certain circumstances.[49]

IV. Events from 1 to 28 August 2014

A. Military developments

33. The Ilovaisk events were the turning point of the initial stage of the armed conflict in eastern Ukraine and led to the signing of the Minsk Protocol of 5 September 2014.[50]

34. The town of Ilovaisk is located 40 kilometres south-east of Donetsk city. From May 2014, it was controlled by armed groups of the 'Donetsk people's republic'. According to the Temporary Investigative Commission on tragic events which led to deaths and captivity of members of volunteer battalions and Armed Forces of Ukraine near the town of Ilovaisk of Donetsk region (hereinafter Temporary Investigative Commission),[51] in the beginning of August 2014, the Headquarters of the Anti-Terrorist Operation took a decision "On carrying out a military operation to defeat main forces of the armed groups in Ilovaisk and taking control over it". By that time, Ukrainian forces, comprising units of the Ukrainian Armed Forces and volunteer battalions[52] had regained control over the areas to the south and south-east of Ilovaisk.

35. On 10 August 2014, Ukrainian volunteer battalions "Donbas" and "Shakhtarsk" made a first, unsuccessful attempt at taking control of Ilovaisk.[53] Over the following days, Ukrainian forces took control over the surrounding villages. On 18 August, "Donbas" and "Dnipro-1" volunteer battalions entered Ilovaisk. In the following days, supported by volunteer battalions "Myrotvorets", "Ivano-Frankivsk", "Kherson" and "Svityaz", they took control over parts of Ilovaisk to the west of the railroad, which crosses through the town from north to south.[54] Armed groups continued to control parts of Ilovaisk to the east of the railroad. Until 29 August, volunteer battalions and armed groups exchanged small arms and light weapons fire in the town. Both Ukrainian forces and armed groups also employed

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the complete restoration of Ukraine's sovereignty over its territory, runs contrary to the non-derogable nature of the prohibition of torture.

[47] International Covenant on Civil and Political Rights, Article 4 (2), Convention against Torture, Article 2 (2).

[48] The prohibition of "outrages upon personal dignity", "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" is recognized in Additional Protocols I and II, as well as article 3 of the Fourth Geneva Convention, as a fundamental guarantee for civilians and persons hors de combat.

[49] Rome Statute, Article 8 (2) (a) (ii), (iii) and (c) (i) (ii) and Article 7 (a), (f) and (k).

[50] On 5 September 2014, the Protocol on the results of consultations of the Trilateral Contact Group on joint measures aimed at the implementation of the Peace Plan of the President of Ukraine P. Poroshenko and of the initiatives of the President of Russia V. Putin was signed in Minsk, Belarus. The 12-point Minsk Protocol envisaged, inter alia, "an immediate bilateral ceasefire" and "monitoring and verification of the ceasefire by the OSCE".

[51] The Commission was established by Verkhovna Rada (the Parliament) of Ukraine on 4 September 2014. The preliminary report of the Commission was published on 20 October 2014 (http://www.pravda.com.ua/articles/2014/10/20/7041381/; last accessed on 28 September 2017). The report touched upon only military and political aspects of the events.

[52] While the chain of command and subordination was loose, in June 2014, these volunteer battalions were formally integrated into the structures of the Ministry of Internal Affairs and the Ministry of Defence. Two types of battalions were under the Ministry of Internal Affairs: operative battalions of the National Guard, such as "Donbas", and special police units, such as "Azov" and "Dnipro-1". The territorial defence battalions, such as "Aidar", Dnipro-2" and "Kryvbas", were under the Ministry of Defence. The only volunteer battalions that remained not integrated into the State structures were "UNA-UNSO" and "Ukrainian Voluntary Corps 'Right Sector'".

[53] Preliminary report of the Temporary Investigative Commission, 20 October 2014.

[54] Ibidem, HRMMU interviews, 13 June 2016, 11 October 2016, 23 May and 13 July 2017.

mortars, howitzers and multiple launch rocket systems while fighting for Ilovaisk and surrounding villages.[55]

36. By 24 August 2014, Ukrainian forces, which controlled the Ukrainian-Russian border some 35 kilometres to the south-east of Ilovaisk, left their positions due to cross-border shelling from the territory of the Russian Federation.[56] According to the Temporary Investigative Commission, on 24 August, regular Russian troops entered the territory of Ukraine and headed towards Ilovaisk.[57] In the evening of the same day, 10 soldiers from the 331st regiment of 98th Airborne Division of the Russian Armed Forces were captured by Ukrainian military near the village of Dzerkalne, 12 kilometres south-east of Ilovaisk.[58] According to the sources in the Russian Ministry of Defence, the paratroopers had lost their way while patrolling the State border of the Russian Federation with Ukraine which, according to the Ministry, was not marked.[59]

37. By 27 August 2014, Ukrainian troops in and near Ilovaisk were encircled by the armed groups allegedly reinforced by troops and weaponry from the Russian Federation. On 28 August, the Commander-in-Chief of the Ukrainian Armed Forces informed the commanders in Ilovaisk that an agreement had been reached "with the Russian side" on the evacuation of wounded and killed Ukrainian soldiers.[60] At 7 p.m., vehicles carrying wounded soldiers, marked with white flags bearing a red cross, departed from the villages of Ahronomichne and Mnohopillia, but came under fire and had to return.[61] The emblems were clearly visible as it is still light at that time in the middle of August, which makes attack against a protected vehicle a violation of the customary rule 30 of the international humanitarian law.

B. Impact of hostilities on civilians and casualties resulting from shelling

"Shelling had no pattern, it was always unpredictable."

"Nothing was particularly targeted and it seemed like the purpose was more to scare the population."

Residents of Ilovaisk

38. By August 2014, an estimated 12,000 to 13,000 civilians – out of a pre-conflict population of 16,000 – remained in Ilovaisk. The town was first shelled on 12 July 2014. Over the following days, shelling disrupted the electricity and water supply.[62] From 7 to 28 August, the town was shelled daily. By mid-August, shelling had cut off the supply of electricity, gas and running water to the town. Shelling damaged up to 600 private households (out of 1,800) and all 116 multi-story residential buildings in Ilovaisk.[63]

39. On the night of 7 to 8 August, Ilovaisk hospital was hit by a shell that damaged the main building and pharmacy, including the medicine storage. Of approximately 90 patients, who were in the hospital at that time, no one was killed or injured. Staff, patients, and the operating room were moved to the basement where, for three days, medical teams provided medical care and performed surgeries. As described by an interlocutor of OHCHR: "you

[55] HRMMU interviews and site visit, 13 July 2017.

[56] Preliminary report of the Temporary Investigative Commission, 20 October 2014, and Report on Preliminary Examination Activities 2016 of the Office of the Prosecutor of the International Criminal Court, 14 November 2016, para. 164.

[57] Ibidem.

[58] http://mediarnbo.org/2014/08/26/dopit-rosiyskih-desantnikiv-mi-ne-znali-shho-nas-vezut-v-ukrayinu-video/ (last accessed on 28 September 2017).

[59] http://www.bbc.com/russian/international/2014/08/140826_russian_paratroopers_ukraine_reaction, (last accessed on 28 September 2017); https://ria.ru/incidents/20140829/1021929011.html (last accessed on 28 September 2017).

[60] Preliminary report of the Temporary Investigative Commission, 20 October 2014.

[61] Ibidem.

[62] HRMMU interviews, 13 July 2017.

[63] HRMMU interviews and site visit, 13 July 2017.

can't imagine how it was to work there. No proper ventilation, the constant smell of blood that could not be washed off, the smell of other biological fluids of nearly 100 patients and the smell of dead bodies. All of that in the heat. We lacked food and nearly fainted while caring for patients".[64]

40. On 10 August, the hospital was forced to close, having run out of medical supplies. Furthermore, there was no electricity, water or gas due to damages caused by the hostilities. From then until the end of the hostilities in and around Ilovaisk on 30 August 2014, the town was deprived of any functioning medical facility. Residents would go to the homes of doctors and nurses for medical assistance.[65] Medics and paramedics of the Ukrainian volunteer battalions also provided medical aid. For instance the medical unit of 'Donbas' battalion in school No. 14 reportedly treated two or three injured civilians every day between 18 and 28 August 2014.[66] All such aid was provided with minimal medical supplies and equipment. Some injured and sick civilians were evacuated for medical care in hospitals elsewhere. From areas controlled by armed groups, the road to Zuhres was used,[67] and from the parts controlled by Ukrainian forces – the road to Khartsyzk.[68] Both of these roads were unsafe due to shelling.

41. From 17 to 18 August, armed groups arranged for several buses to evacuate some civilians (mostly women and children) from Ilovaisk to the areas north of the town controlled by the armed groups.[69] Civilians that stayed in Ilovaisk and who did not have a basement in their houses hid in public buildings.

42. In the western part of the town, where Ukrainian battalions took positions on 18-19 August, civilians hid in the basements of kindergarten No. 3 (1a, Svobody Street), school No. 14 (54, Lomonosova Street) and the railroad machine station No 191 (169, Lomonosova Street).[70] Kindergarten No. 3, where Ukrainian battalions were positioned from 19 to 26 August, hosted up to 150 civilians. In the basement of school No. 14, where Ukrainian battalions were positioned from 19 to 28 August, two rooms measuring two by 10 metres sheltered up to 50 people. Members of the Ukrainian battalions let civilians use these basements as shelter, and go out to get food or use the toilet.

43. In the eastern part of the town, controlled by the armed groups, civilians hid in the House of Culture (193B, Pervomaiska Street), the library (78, Shevchenko Street) and the railway station (37, Vokzalna Street).[71] Most of the basements in these buildings were not properly equipped to serve as bomb shelters. They had poor ventilation, lacked toilets and were affected by leaking water. Over 250 civilians, including injured persons, hid in the House of Culture. Many slept on wet concrete floors in the bomb shelter and in its adjacent basement. The yard of the House was directly affected by the hostilities. In one case two women sustained fragmentation injuries when shelling hit the yard.[72]

44. The vicinity surrounding Ilovaisk was also heavily affected by armed hostilities. On 2-3 August 2014, approximately 200 civilians were evacuated from the village of Hrabske (five kilometres south-west of Ilovaisk) to a convent 3.5 kilometres away, leaving only a few people in the village. In the period from August to September 2014 the control over this village shifted three times between armed groups and Ukrainian volunteer battalions.[73]

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[64] HRMMU interview, 13 July 2017.

[65] HRMMU interviews, 2 November 2016 and 13 July 2017.

[66] HRMMU interview, 11 November 2016.

[67] HRMMU interview, 13 July 2017.

[68] HRMMU interview, 11 November 2016.

[69] HRMMU interview, 13 June 2016.

[70] HRMMU interviews, 2 November 2016 and 13 July 2017.

[71] HRMMU interviews, 21 October 2016 and 13 July 2017.

[72] HRMMU interview, 13 July 2017.

[73] According to the information provided by the Government of Ukraine, the village of Hrabske was controlled by armed groups from 2-3 to 18 August 2014 and from 29 August 2014 onwards. The Ukrainian forces controlled the village in the period from 18 to 29 August 2014, following the military operation conducted between 12 and 18 August to regain control over this village.

In early September 2014, residents returned to the village and found most houses destroyed and pillaged.[74]

45. The villages of Mnohopillia (nine kilometres south of Ilovaisk) and Pokrovka (seven kilometres east of Ilovaisk) were shelled several times between 7 and 29 August. Shelling intensified during the few days before 29 August, forcing civilians to hide in basements for most of the time. According to local residents, both villages were controlled by Ukrainian forces during the whole month of August 2014. Looting, wilful destruction and military usage of civilian property were common. Reportedly, food stocks in the basements were consumed or purposefully destroyed; cutlery, cups, bed sheets, linens and vehicles were seized.[75]

46. Information received by OHCHR through its monitoring and interviewing indicates that parties to the conflict shelled Ilovaisk and the surrounding villages in non-compliance with the principles of distinction, proportionality and precaution while employing explosive weapons in densely-populated civilian areas.[76] Indiscriminate shelling of Ilovaisk and its closest villages of Kobzari and Zelene resulted in the death of at least 36 civilians (18 women and 18 men). Eleven of the victims (five women and six men) were killed in Ilovaisk between 7 and 18 August, when the town was fully controlled by armed groups; and 25 (13 women and 12 men) were killed between 19 and 28 August, during fighting between Ukrainian forces and armed groups in the town.[77] The total number of civilians injured during this period is not known; yet on 7 August alone, at least 83 civilians were reportedly injured by shelling in Ilovaisk town[78], and at least two dozen civilians injured in Ilovaisk in August 2014 sustained physical impairments.[79]

C. Killings of civilians

"I heard his screams, and then a soldier said 'take his body, he will die on his own'".

A detained civilian, witness to a killing

47. Witness accounts and available forensic data suggest that the killing of civilians in Ilovaisk and the surrounding villages did not occur on a massive or systematic scale. After Ukrainian forces left Ilovaisk, a mass grave with three bodies[80] was exhumed in the yard of school No. 14 where the "Donbas" battalion had been stationed.[81] OHCHR later established that the victims were civilians Valentyn Minich, Ihor Trufanov and Serhii Myronenko. According to the forensic reports, Mr. Minich and Mr. Trufanov had signs of firearm wounds on their bodies, while the Mr. Myronenko probably died as a result of shelling while deprived of his liberty in school No.14.

Case of Valentyn Minich

48. Valentyn Minich[82] remained in Ilovaisk while his family left on 17-18 August 2014. He reportedly wanted to look after their property, as many houses caught fire after being hit

[74] HRMMU interviews, 27 April and 27 June 2017.
[75] HRMMU interviews and site visit, 13 July 2017, HRMMU interview, 24 July 2017.
[76] HRMMU meetings, 13 July 2017.
[77] HRMMU civilian casualty records.
[78] HRMMU meeting, 13 July 2017.
[79] Ibidem.
[80] There is no internationally agreed definition of a 'mass grave'. The former United Nations Rapporteur on extrajudicial, summary or arbitrary execution, Mr. Bacre Ndiaye, defined mass graves as locations where three or more victims of extrajudicial, summary or arbitrary executions are buried, not having died in combat or armed confrontations. UN Doc E/CN.4/1993/50, 10 February 1993: Situation of Human Rights in the Territory of the Former Yugoslavia. Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992. Annex I: Summary of the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on His Mission to Investigate Allegations of Mass Graves from 15 to 20 December 1992, para. 5.
[81] HRMMU interviews, 13 June 2016.
[82] Date of birth 9 October 1948.

by shelling. A few days after leaving, his wife could no longer reach him. She returned to Ilovaisk on 1 September 2014 and learnt that his body had been found in a mass grave. According to a witness, their house had been looted and there were signs[83] of it having been used by the military.[84] The forensic death certificate issued on 2 September 2014 in Khartsyzk indicates that Mr. Minich died on 26 August 2014 from a gunshot wound to his head.

49. A witness, who had hidden in the basement of school No.14 from 8 to 28 August 2014, indicated that Mr. Minich had been there. On 26 August, he was reportedly informed that his house was on fire and went to check his property. Witnesses remember that he returned to the basement upset. The same day, Mr. Minich was summoned by a member of "Donbas" battalion, call sign Kat, who accused him of being a "spotter".[85] This was the last time he was seen alive. Other witnesses heard Mr. Minich being taken to the sports hall in the school, from where they then heard screaming and choking.[86] They reported seeing his body lying outside the school building the following morning. Reportedly, on 28 August, Mr. Minich's body was buried along with two others. According to a witness, he had bruises and lesions as if he had been dragged.[87]

Case of Ihor Trufanov

50. Since mid-July, Ihor Trufanov[88] and his wife were hiding every night from shelling in the basement of the railroad machine station[89], along with approximately 20 other civilians. On 19 August 2014, the volunteer battalions "Donbas" and "Dnipro-1" entered the premises. After checking the site, they reportedly questioned all the men, and allowed the civilians to stay, providing them with food and water. On 25 August, a battalion member spotted that Mr. Trufanov had a cell phone and took him away in an unknown direction. On the same day, all the civilians were moved by car to school No.14. The witnesses recall that Mr. Trufanov's wife was constantly inquiring about her husband, as he was nowhere to be found.[90]

51. On 26 August, a witness saw the victim's body in the school yard; his fingers were all black, one leg was injured and there were bullet holes in his stomach and chest.[91] The forensic death certificate issued on 2 September 2014 in Khartsyzk town indicates that Mr. Trufanov died on 26 August 2014 from a gunshot wound to his stomach which damaged his internal organs.

Case of Serhii Myronenko

52. On 22 August 2014, while traveling from Zelene to Ilovaisk, Serhii Myronenko[92] was detained at a checkpoint run by Ukrainian volunteer battalions at the intersection of Vynohradna and Lomonosova Streets. His whereabouts remained unknown to his family for six days, until 28 August, when Mr. Myronenko's parents were informed of his death.[93] The forensic death certificate issued on 2 September 2014 in Khartsyzk town indicates that Mr. Myronenko died on 26 August 2014[94] from a penetrating fragmentation wound to his head that injured his brain, probably due to shelling.

53. A witness reported to OHCHR that on 26 August 2014, Mr. Myronenko was brought to school No.14, where he was reportedly locked with seven other people in a metal cabinet located in a small detached building in the school yard. "Donbas" battalion members allegedly took them one by one for interrogation and beat them. On the morning of 27 August, the school was shelled by armed groups. After the second round of shelling, a

[83] In the yard, there was a blindage (a protective structure over a pit, usually used by military).
[84] HRMMU interviews, 13 June 2016.
[85] HRMMU interviews, 29 September 2016.
[86] HRMMU interviews, 21 October 2016.
[87] HRMMU interview, 29 September 2016.
[88] Date of birth 13 September 1968.
[89] Industrial facility in the town of Ilovaisk, near railroads, located at 169, Lomonosova Street.
[90] HRMMU interviews, 26 October 2016 and 8 August 2017.
[91] Ibidem.
[92] Date of birth 18 January 1981.
[93] HRMMU interviews, 6 July 2016 and 8 August 2017.
[94] There are reasons to believe that the date of death indicated in the forensic report may not be accurate.

witness saw that Mr. Myronenko was bleeding. Three people were killed in the shelling: Mr. Myronenko and two members of the battalion. On the morning of 28 August, a battalion doctor told the witness to bury Mr. Myronenko and the bodies of two other men lying near the school.[95] This incident could be considered a violation of the customary rule 115[96] of the international humanitarian law, as the grave was not even marked.

Case of Liudmyla Horbenko and Valerii Kolesnichenko

54. Civil partners Liudmyla Horbenko[97] and Valerii Kolesnichenko[98], both employees at the railway depot, were found killed in their home on 29 August 2014 at 36 Proletarska Street in Ilovaisk.[99] According to the forensic report, they both died on 27 August 2014. Ms. Horbenko died from a firearm bullet wound to the head, which caused brain damage, and Mr. Kolesnichenko died of a penetrating firearm abdominal wound that damaged his internal organs.[100]

55. While there were no eyewitnesses to the incident, local residents hiding in the basement of the house at 32 Proletarska Street reported to OHCHR that on 27 August, at around 3 p.m., they had heard the "heart-breaking" scream of a woman and then a fire round. On 29 August 2014, the bodies of the two victims were found in their basement, which was closed from the outside. Interlocutors who removed the bodies told OHCHR they saw traces of blood and bullet cases when entering the house. They found the bodies swollen and allegedly with fire wounds. It reportedly appeared that the face of both victims had been beaten. Witnesses also believed that the limbs of the victims had been broken. The couple was buried in the garden of the house and then reburied later in the cemetery.[101]

D. Inhuman or degrading conditions of detention, torture and ill-treatment of civilians

"In the pit, we were given food and water, but I did not take it... I hoped this would help me die sooner."

A victim of torture

56. Interviews conducted by OHCHR suggest that the victims of torture and ill-treatment committed by Ukrainian forces in Ilovaisk and its vicinity in August 2014 were men, aged from 30 to 66 years old, who were suspected either of being a member of, or otherwise affiliated with armed groups. They were kept in inhuman and degrading conditions, often lacking food and water in hot temperatures. They were reportedly beaten either to extract a confession or as a punishment for being suspected of affiliation to the armed groups. There were no reports of ill-treatment or torture of women or children.

In Ilovaisk

57. Most documented cases of torture and ill-treatment of civilians by OHCHR took place between 22 and 28 August 2014, in school No. 14, which was controlled by 'Donbas' battalion from 18 to 28 August 2014. In the yard, there was a small detached building with a few rooms. This was the school's workshop, containing various mechanical devices and instruments. The building was used by "Donbas" battalion for various purposes, including

[95] HRMMU interview, 29 September 2016.

[96] Rule 115 of customary international humanitarian law: The dead must be disposed of in a respectful manner and their graves respected and properly maintained.

[97] Date of birth 23 April 1960.

[98] Date of birth 14 June 1963.

[99] Proletarska Street is located immediately to the west of the railroad, which divided the town from north to south. Though this part of the town was largely controlled by Ukrainian forces, by 28 August 2014 the Ukrainian forces retreated to the school No. 14 (54, Lomonosova Street) – far west of the town. Therefore, OHCHR cannot establish with certainty who controlled this street at the time of the incident.

[100] Data provided by the forensic bureau in Donetsk city.

[101] Public account of the victim's relatives, 28 April 2015.

for the treatment of its wounded elements.[102] One side of the building contained a room with a metal cabinet measuring approximately 200×80×200cm.[103] OHCHR was informed that men suspected of being members of armed groups were held in that cabinet for a few days. Victims indicated that while there were some holes to allow air, it was very hot, stuffy and completely dark inside. Based on interviews, on different days, the number of men held in the cabinet varied from seven to 20. All of those detained that were interviewed by OHCHR reported that they were beaten with a view to extracting a confession.

58. On 22 August 2014, a 30-year-old man was detained with another man at a checkpoint, controlled by one of the Ukrainian volunteer battalions. Both were accused of being "spotters". After being interrogated by battalion members, they were reportedly put into a dog's metal cage measuring one metre by one metre, at the checkpoint, where they were kept for four nights. As they were not able to communicate with their relatives, their whereabouts were unknown. On the morning of 23 August 2014, having been threatened with violence and death, they were forced to dig trenches on Vynohradna Street. On the evening of 26 August 2014, they were taken by foot to school No. 14. Once there, they were locked in the metal cabinet with seven other men. After 30 minutes, two battalion members took the detainees out one by one and interrogated all of them. During their interrogation, the two aforementioned detainees were beaten by the "Donbas" battalion members. The 30-year-old man claims he was struck on the forehead and threatened that one of his fingers would be cut off. At some point, members of the battalion ordered the victim and another man to undress in the cabinet and wait there naked until the guards returned, threatening them with physical violence and to be "nailed". The detainees did as instructed. Time passed and the guards did not return, so they dressed. On 29-30 August 2014, before retreating, the "Donbas" battalion allowed all of the civilians detained in school No.14 to go home.[104]

59. A 66-year-old man was detained by "Donbas" battalion at the corner of Lomonosova and Hoholia Streets, around 25 August. He was accused of selling drugs and being an artillery spotter for armed groups. He was dragged to school No. 14 and put in a metal cabinet with 15 other people. While detained, he was told he would have to dig trenches. As he refused, he was kicked in the chest and ribs. He was kept in the cabinet for four days, with practically no access to water or to a toilet. All people held in the cabinet were able to leave only when the battalion left the school, on 28 August.[105]

60. Between 21 and 22 August 2014, a 44-year-old man was arrested by battalion members in his home, which was located close to an armed group military position. He was taken to a military base located in the kindergarten "Lastochka". On 25 August, he was moved to school No. 14 where he was detained for four days in the metal cabinet together with other men. His whereabouts were unknown to his family during that period. On the morning of 29 August, after the departure of the "Donbas" battalion, he returned home. A witness recalls that the victim's face and hands showed traces of beatings and he had a 61.

61. On 26 August 2014, a 54-year-old man and his son were detained by members of "Donbas" battalion in Ilovaisk and forcefully brought to school No. 14. Allegedly, there were approximately 20 men in the school that day: the young men were reportedly forced to dig trenches and, at other times, were locked in the metal cabinet. They were not provided with any food or water, although sometimes, relatives of the detainees managed to bring them food. On 26 and 27 August, the school was shelled and some battalion members were killed. The victim sustained shrapnel injuries to his left leg and right eye. His leg was bandaged and for the following five days he remained in the metal cabinet without further medical assistance. As the battalion members were leaving the school on 28 August, they opened the metal cabinet and told all the detainees to return home. The victim had to crawl to his

[102] HRMMU interviews, 21 October and 2 November 2016.
[103] HRMMU site visit, 13 July 2017.
[104] HRMMU interview, 29 September 2016.
[105] HRMMU interview, 6 July 2016.

house due to his injuries and, from there, he was brought to the hospital in Khartsyzk. His left leg was amputated and he still has not recovered sight in his right eye.[106]

62. On 24 August 2014, while he was repairing the windows of his relative's house on Izotova Street, an elderly man was approached by two battalion members wearing camouflage uniforms and balaclavas. Reportedly, they spoke rudely to him, calling him a "separatist" and mocking him. One battalion member hit him in the chest with a rifle butt a couple of times and the battalion members then left. The victim died the following week, but the cause of his death is unknown.[107]

In Mnohopillia

63. On 10 August 2014, a man traveling from Hryhorivka to Mnohopillia to visit his mother was stopped at the entrance of Mnohopillia, at a checkpoint controlled by Ukrainian forces, including volunteer battalions "Donbas" and "Azov". Battalion members shot in the direction of the victim to scare him and then beat him while his wrists and legs were tied with a rope. Then they tied a rope around his neck and dragged him through a field until he began to suffocate and lost consciousness. Reportedly, a soldier of the Ukrainian Armed Forces asked the battalion members to release him. The victim suffered numerous hematomas, and his sight deteriorated.[108]

64. On 11 August 2014, seven or eight men wearing camouflage without insignia demanded a local resident of Mnohopillia to give them his car. When he refused, they searched his house and found a hunting rifle. He was then taken to the outskirts of the villages and, together with two other detained men from Mnohopillia, was forced to fill trenches with earth for more than an hour. A bag was then put over the victim's head and he was transported in the trunk of a car to Osykove (approximately 13 kilometres away). The other two victims were in another car. For about three hours, the victim was kept in Osykove where he was interrogated by three members of the Ukrainian battalions who wanted him to confess to being a "separatist" or a "spotter". They reportedly took him by the hands and legs, threw him on the ground face down, and beat him with metal chains. On the same evening, he was released in a field, and had to walk about four kilometres home. The victim told OHCHR his body was covered in blood, his ribs were broken and he was in pain for more than three weeks. He still has scars on his legs from the metal chains. All of his documents were seized and never returned.[109]

In Hrabske

65. OHCHR received reports of civilians detained by Ukrainian volunteer battalions in a pit at the northern entry of Hrabske, in August 2014.[110] For example, one man was stopped and searched as he approached a military position allegedly belonging to the "Donbas" battalion. He was put in a pit shirtless and questioned about other local residents, while battalion members fired shots around him. He was kept in the pit for three hours. Then the battalion members put a bag over his head and brought him to another military position in Mnohopillia, where he was kept outside for some time and questioned about his identity. At some point, the battalion members put him into a car, drove him away and left him on the side of the road. They warned him never to use this road again or he would be killed. He walked back home.[111]

In Pokrovka

66. In the morning of 14 August 2014, eight armed men wearing black uniforms and balaclavas entered a man's house in Pokrovka. They asked him to unlock his minivan. After

[106] HRMMU interview, 27 October 2016.
[107] HRMMU interview, 18 October 2016.
[108] HRMMU interview, 29 June 2016.
[109] HRMMU interviews, 13 and 24 July 2017.
[110] HRMMU interviews, 27 April and 27 June 2017.
[111] HRMMU interview, 27 June 2017.

finding a Saint George ribbon[112] inside the van, three of the armed men started violently beating the man in the stomach and head with their weapon butts causing him to temporarily lose consciousness. Another man made a small cut in the victim's neck with a knife. Before leaving, the perpetrators looted the house, taking money, jewellery, documents, household items and clothes. The following morning, they returned, put an automatic rifle to the victim's ear, and demanded a written statement donating his cars, money and other personal belonging to support the Ukrainian Armed Forces. In the second part of August, the victim saw that the Ukrainian forces used his minivan to transport weapons and wounded soldiers.[113]

In other locations around Ilovaisk

67. OHCHR documented cases in which detained civilians who were suspected either of being a member of, or otherwise affiliated with armed groups, were kept in several locations and subjected to ill-treatment and torture with the view to punishing them or extracting information or confessions.

68. On 11 August 2014, a civilian was stopped by five unidentified armed men in camouflage on the road from Pokrovka village to Ilovaisk. The victim's ID documents and phone were seized and he was questioned about Russian numbers found in his phone. When shelling started, the victim was put in an uninhabited building nearby. Another man was being held there, bearing bruises on his body. Both were later transported to Starobesheve. On the way, the victim was constantly beaten with weapon butts, especially in the neck area, until he became numb from the pain.[114]

69. In Starobesheve, the victim was ill-treated and tortured in what he described as a former sports park, allegedly controlled by the "Shakhtarsk" battalion.[115] There, unidentified armed men in camouflage beat him with rifle butts in the chest, kidneys and legs while laughing. The victim was then put into a pit together with two other detainees. In the evening, men in balaclavas, with call signs Pop and Psiholog, reportedly interrogated and beat the victim whose hands were taped behind his back. The perpetrators also laid the victim on the ground on his stomach and pulled his hands up until his arms broke. The victim was then placed back into the pit, where he remained for approximately seven days. One day, battalion members came back from the front line and severely beat each man kept in the pit. The victim was beaten, his teeth were broken and he was threatened to be killed. Later he was transferred to an unfinished building in the vicinity of the Kurakhove water storage reservoir, where a doctor provided medical assistance and the detainees were allowed to wash.[116] The victim was later released.

70. In another case, an armed group member was detained by Ukrainian forces after he was seriously wounded in combat on 10 August 2014, near Ilovaisk. He was first taken to a hospital and provided with medical aid. At some point, two men in camouflage and one in civilian clothes entered his hospital room and made the medical personnel leave. Then they reportedly subjected the victim to electric shocks in the stomach and burnt his toes with a lighter. They also pressed a spoon on his left ribs, which was very painful. As the victim could not talk or move due to previously sustained wounds, the perpetrators left. A few days later, the victim and another wounded member of an armed group were placed into a pit measuring 2.5×2.5 meters. The Ukrainian forces soldiers guarding them reportedly threw stones at them, did not provide water, and forced them to get up and then pushed them back on the ground. One soldier poured alcohol on the victim's arm and flicked a lighter on and off next to him. One day, the victims were transported to another building (possibly in

[112] A Saint George Ribbon was a component of many high military decorations awarded by the Russian Empire, the Soviet Union, and the current Russian Federation. In 2005 it was revived as a symbol of the commemoration events related to the Second World War. In 2014, the symbol was widely used by armed groups in eastern Ukraine.

[113] HRMMU interview, 26 July 2017.

[114] HRMMU interview, 27 October 2016.

[115] On 17 October 2014, "Shakhtarsk" battalion was disbanded due to the numerous violations committed by its members.

[116] HRMMU interview, 27 October 2016.

Kurakhove), where six other members of armed groups were detained.[117] Shortly after, they were released in exchange for captured Ukrainian soldiers. Some victims were not returned their documents.[118]

V. Events from 29 to 31 August 2014

A. Military developments

71. At 1 a.m. on 29 August 2014, the web-portal of the presidency of the Russian Federation posted a statement by President Putin appealing to the armed groups "to open a humanitarian corridor for encircled Ukrainian servicemen to avoid unnecessary victims and to allow them to leave the area of hostilities without impediments".[119] Early in the morning of 29 August, Russian media disseminated a statement of the armed groups in which they supported President Putin's initiative and expressed their readiness "to ensure the security of the withdrawal of Ukrainian servicemen from the encirclement with the condition that they shall pass through the created corridor without their weapons".[120] Reportedly, representatives of the Russian troops near Ilovaisk passed the same proposal to Ukrainian forces early in the morning of 29 August.[121]

72. These proposals were not accepted by the Ukrainian military command.[122] At 8 a.m. on 29 August, Ukrainian forces, with their weapons and ammunition, moved in two columns of armoured military vehicles, military and civilian trucks, buses and other vehicles out of the villages of Ahronomichne and Mnohopillia, where they had gathered by 6 a.m. on 29 August. They took two parallel roads heading to Starobesheve town and Novokaterynivka village.[123]

73. Soon after departing, the columns came under intense shelling and small arms and light weapons fire. Hundreds of Ukrainian soldiers were killed or wounded in this attack.[124] Witnesses reported to OHCHR that one of the unarmoured trucks displaying a self-made 1×1 metre white flag with a red cross that carried over a dozen wounded Ukrainian soldiers from Mnohopillia was hit by a heavy weapon, killing all inside but one.[125]

74. Some Ukrainian soldiers, individually or in groups, managed to break the encirclement. Many surrendered either soon after the attack, or later that day, or during the following days. A group of Ukrainian soldiers occupied positions in the village of Chervonosilske and fought back until 30 August when they surrendered.[126] Captured Ukrainian soldiers were held in open places until 31 August and 1 September. During those two days, the majority of them, including those who were wounded before being captured, were evacuated to Government-controlled territory in vehicles arranged by Ukrainian forces.[127] Some 300 Ukrainian soldiers, including at least 109 members of volunteer battalions, were handed over to

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[117] HRMMU interview, 1 August 2017. The detention of eight members of armed groups in this building is also corroborated through a video posted on 17 August 2015, dated 15 August 2015: https://www.youtube.com/watch?v=AixkFBip4WM (last accessed on 28 September 2017).

[118] HRMMU interviews, 27 October 2016 and 1 August 2017.

[119] http://kremlin.ru/events/president/news/46506 (last accessed on 28 September 2017).

[120] https://www.infox.ru/news/220/social/society/135461-opolcenie-podderzalo-prizyv-putina-o-gumanitarnom-koridore-dla-voennyh-ukrainy?slug=opolcenie-podderzalo-prizyv-putina-o-gumanitarnom-koridore-dla-voennyh-ukrainy (last accessed on 28 September 2017); https://ria.ru/world/20140829/1021860892.html (last accessed on 28 September 2017).

[121] Preliminary report of the Temporary Investigative Commission, 20 October 2014.

[122] Ibidem.

[123] HRMMU interviews, 18, 21 and 28 October 2016, and 21 January 2017.

[124] For more details, see para. 81 above.

[125] HRMMU interviews, 14 September and 4, 9 and 11 November 2016, and 29 June 2017.

[126] HRMMU interviews, 11 November 2016 (three individuals).

[127] HRMMU interviews, 7 October 2016, and 6 February and 12 April 2017.

the armed groups of the 'Donetsk people's republic'. They were released within so-called 'exchanges'[128] by the end of 2014, while some 10 remained in captivity until mid-2015.

75. The Government of Ukraine maintains that Russian Federation regular troops attacked the Ukrainian forces withdrawing from Ilovaisk on 29 and 30 August. According to the Office of the Prosecutor General of Ukraine, 3,500 strong nine battalion-tactical groups of the Armed Forces of the Russian Federation equipped with tanks, armoured vehicles and artillery penetrated the territory of Ukraine on 24 August 2014.[129]

76. The Government of the Russian Federation has been denying the presence of regular Russian Federation troops on the territory of Ukraine during the conflict. On 21 January 2015, the Minister of Foreign Affairs of the Russian Federation, Sergei Lavrov, commented on the question about presence of Russian troops and weapons in eastern Ukraine as follows: "Regarding troops and weapons. We have heard it many times. I say every time: if you state it, show me the facts. No one can show us the facts, or does not want to".[130] On 17 December 2015, the President of the Russian Federation, Vladimir Putin, stated "we did not deny that there were Russian military in Donbas solving certain problems in military sphere, but it does not mean the presence of regular Russian troops there".[131]

77. On 27 August 2014, the 'prime-minister' of the 'Donetsk people's republic', Alexandr Zakharchenko, stated that "during all this time [of the conflict], there were 3,000-4,000 of them [Russians] in our ranks".[132] Further he was quoted as saying, "alongside with us, current [Russian] military are fighting; instead of going on vacation, they came to us".[133]

78. Most of the Ukrainian soldiers captured during the Ilovaisk events and interviewed by OHCHR maintain that they were attacked and captured by Russian Federation soldiers. They highlighted: 1) the distinct accent of their captors, which was not typical for Russian-speaking residents of Ukraine;[134] 2) the type of uniform their captors wore ("Russian digital camouflage",[135] "digital camouflage")[136] which, according to them, was typical for the Armed Forces of the Russian Federation and was not broadly available in Ukraine; 3) conversations with their captors who introduced themselves as belonging to certain units of the Armed Forces of the Russian Federation ("Pskov Airborne Division",[137] "Pskov Brigade",[138] "25th Airborne Brigade"[139], "Russian contracted soldiers",[140] "Tula paratrooper",[141] "from Kostroma"[142], 'VDV [airborne] hospital of the Russian Federation in Rostov region',[143] "I am a paratrooper from Pskov"),[144] or otherwise affiliated with the Russian army[145]; 4) overheard conversations between captors (who compared regular army salary with

[128] Paragraph 5 of the Minsk Protocol envisaged "to release immediately all hostages and illegally detained persons". Based on this provision, the Government of Ukraine and armed groups carried out a number of simultaneous releases (broadly referred to as "exchanges") of detainees, mainly of members of the armed groups and Ukrainian soldiers.

[129] http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=213793 (last accessed on 28 September 2017).

[130] https://www.youtube.com/watch?v=4DSy-6K971k (last accessed on 28 September 2017).

[131] https://www.youtube.com/watch?v=H-TR85FMiBM (last accessed on 28 September 2017).

[132] https://rutube.ru/video/48d31e134b7f6ff1e7f236b820b115f7/ (last accessed on 28 September 2017).

[133] http://tass.ru/mezhdunarodnaya-panorama/1404553 (last accessed on 28 September 2017).

[134] HRMMU interviews, 5 April, 30 September, 7 and 18 October and 3 November 2016, and 26 January 2017.

[135] HRMMU interviews, 5 April and 23 September 2016.

[136] HRMMU interviews, 30 September 2016 (two individuals) and 26 January 2017.

[137] HRMMU interview, 18 October 2016.

[138] HRMMU interview, 23 September 2016.

[139] HRMMU interview, 3 November 2016.

[140] HRMMU interview, 28 October 2016.

[141] HRMMU interview, 7 October 2016.

[142] HRMMU interviews, 30 September, 9 and 30 November 2016.

[143] HRMMU interview, 21 July 2017.

[144] HRMMU interview, 21 October 2016.

[145] "We were initially told that it would be a training exercise, but then commanders told us that we must enter Ukrainian territory in order to stop shelling of Russia", HRMMU interview, 18 October 2016.

triple pay for undertaking armed action in Ukraine);[146] 5) as detainees, they were taken across the border to the Russian Federation before being transported back to Ukraine to detention facilities near or in Donetsk city;[147] 6) weapons and equipment used by captors were produced in the Russian Federation and not used by the Ukrainian Armed Forces before the conflict.[148] Ukrainian soldiers interviewed by OHCHR maintain that they could clearly distinguish between regular troops of the Russian Federation, whom they fought on 29 and 30 August, and members of armed groups who controlled the broader perimeter around Ilovaisk, and whom they fought before 29 August and to whom they were handed over on 31 August 2014 and during the following days.

B. Civilian casualties

79. At least five civilians (three women and two men) were killed by shelling from 27 to 29 August, in Komsomolske and Osykove, along the retreat route of the Ukrainian forces.[149]

80. In the afternoon of 29 August, a wounded Ukrainian soldier was hiding in the forest belt between Leninske and Novokaterynivka villages, near the road taken by one of the columns of Ukrainian forces earlier that day. Between 2 and 3 p.m., after the fighting along this road was over, a civilian vehicle stopped near him. It had A4 sheets of paper with the word "children" on its front and rear windshields and white handkerchiefs on its mirrors. After a short talk with the Ukrainian solider, the male driver returned to the vehicle. Before he sat back in the vehicle, an armoured personnel carrier positioned some 400 metres away fired at him and the vehicle.[150] The driver, Mr. Volodymyr Popkov, his wife, Mrs. Tetiana Popkova, their 14-year-old daughter, Daryna Popkova, and Ms. Tamara Nazarova, were killed.[151]

C. Alleged killings of persons hors de combat

81. According to the Office of the Prosecutor General of Ukraine, during the Ilovaisk events, 366 Ukrainian soldiers were killed and 429 were wounded[152], mostly on 29 and 30 August. In early September 2014, the majority of bodies of Ukrainian soldiers from the Ilovaisk area were brought to the Dnipropetrovsk and Zaporizhzhia regional forensic bureaus.[153] According to the latter, the cause of death in most cases was due to explosive and fragmentation injuries.[154] They also reported that some bodies had decomposed to such an extent that it was extremely difficult or impossible to establish the exact cause of death.[155]

82. OHCHR received allegations of the killing of Ukrainian soldiers after they had surrendered on 29 August 2014. Further allegations have suggested that some wounded Ukrainian soldiers were killed while being *hors de combat*, after the hostilities were over. For one such case, forensic evidence did not support the allegation.[156] To date, OHCHR could

[146] HRMMU interview, 11 October 2016.
[147] HRMMU interview, 18 October 2016.
[148] HRMMU interview, 25 July 2017.
[149] HRMMU civilian casualty records.
[150] HRMMU interviews, 5 April and 5 October 2016.
[151] Ibidem.
[152] Letter from the Prosecutor General's Office of Ukraine to HRMMU, 31 July 2017.
[153] 155 bodies from Ilovaisk and its vicinity were delivered to Dnipropetrovsk regional forensic office (HRMMU interview, 7 October 2016), and approximately 180 bodies were delivered to Zaporizhzhia regional forensic office (HRMMU interview, 20 October 2016).
[154] HRMMU interviews, 7 and 20 October 2016.
[155] Ibidem.
[156] A Ukrainian soldier told OHCHR that his fellow soldier was heavily wounded when the civilian vehicle they were driving was hit by a shell. The victim was allegedly killed by several shots after being unable to follow the order of Russian soldiers to climb onto the armoured personnel carrier which was collecting captives. His body was recovered and identified later. Forensic record proves the soldier died as a result of explosive wounds. No bullet wounds were found on his body (HRMMU interview, 7 October 2016).

not obtain corroborating forensic evidence that would support such claims, including the allegations detailed in paragraphs 84 to 87 below.

83. OHCHR also received an allegation that during the whole conflict period, some 20 members of the armed groups of the 'Donetsk people's republic', whose bodies were received from Ukrainian forces, could have been tortured before their death and/or killed while in detention. OHCHR did not receive, however, specific information on those members of the armed groups who could have been killed while *hors de combat* during the Ilovaisk events.[157] Yet, OHCHR does not exclude that such information could become available in the future.

Alleged killing of three surrendered Ukrainian soldiers hors de combat

84. OHCHR received information that during the morning of 29 August, some 20 Ukrainian soldiers loaded onto a truck as part of the column of vehicles with Ukrainian forces retreating from the village of Mnohopillia towards the village of Novokaterynivka. Some 30 minutes after departure, the truck went under fire, and most of those on board were killed or wounded. Seven survivors, many of whom had light wounds, hid on the roadside. After the fighting was over, they waived an improvised white flag indicating that they were surrendering. Armed men from a nearby hill shouted at them to lay down their weapons and to crawl onto the hill. When Ukrainian soldiers reached the top of the hill, the commander of the armed group stationed nearby – whom they learned later from their captors held the rank of senior lieutenant – ordered them to remove their bulletproof vests and helmets and to undress.[158]

85. According to one of the survivors, one soldier was taking off his clothes very slowly because he was wounded, which apparently infuriated the senior lieutenant. He began firing at the soldier from a distance of 15 metres, missing him. He then came closer and fired two shots into the victim's back and head.[159] Another witness told OHCHR that the senior lieutenant shouted at the soldier that he was undressing too slowly, and allegedly shot him first in the back and then in the head.[160] The soldiers were then ordered to stand up and go. One of them, a sergeant, pleaded several times with the senior lieutenant not to kill his fellow soldiers as they were very young. Two witnesses told OHCHR they saw the senior lieutenant fire two shots from a Kalashnikov into the sergeant's back and head.[161] As the captives walked, a third soldier repeatedly asked the senior lieutenant if he could call his mother. Two witnesses, walking at a distance from him, heard two or three shots. When, they looked back they saw the man lying on the ground.[162] A third witness told OHCHR he saw the perpetrator allowing the soldier to pass by, and then shot him in the back.[163] When the group of captured soldiers reached a location where other soldiers were held, they witnessed a major rebuking the senior lieutenant; the major then assured them that nothing would happen to them.[164] The survivors were later handed over to Ukrainian forces.

Alleged killings of wounded Ukrainian soldiers hors de combat

86. OHCHR interviewed a number of Ukrainian soldiers who suggested that on 29 August, they witnessed the killing of wounded Ukrainian soldiers *hors de combat* after the fighting was over. In all these cases, the witnesses did not see bodies of the alleged victims.

87. In one case, a Ukrainian soldier reported to OHCHR that he hid in a field near Novokaterynivka village, where many killed and wounded Ukrainian soldiers were lying. After the hostilities were over, he saw groups of armed men in camouflage combing the field. They reportedly approached the Ukrainian soldiers and took some of their belongings such as bullet-proof vests. He also heard them make single shots.[165] In another case, a

[157] HRMMU meeting, 13 July 2017.
[158] HRMMU interview, 3 November 2016.
[159] HRMMU interview, 26 January 2017.
[160] HRMMU interview, 7 October 2016.
[161] HRMMU interviews, 7 October 2016 and 26 January 2017.
[162] HRMMU interviews, 3 November 2016 and 26 January 2017.
[163] HRMMU interviews, 7 October and 4 November 2016.
[164] HRMMU interview, 3 November 2016.
[165] HRMMU interview, 23 September 2016.

wounded Ukrainian soldier was hiding in the forest after his vehicle came under fire on the road from Mnohopillia to Novokaterynivka. When the shooting ended, he heard several people scream "I am wounded!" followed by single shots.[166] In a third case, after fighting stopped along the road from Mnohopillia to Novokaterynivka, several Ukrainian soldiers hiding in a field nearby saw an airborne infantry fighting vehicle (BMD) 300-400 metres away, with soldiers sitting on it, moving slowly through the field. The Ukrainian soldiers heard single shots fired from the BMD. They also heard single shots being fired in the forest, about one kilometre away.[167]

An enforced disappearance which may have led to death

88. On 30 August, a few dozens of wounded Ukrainian soldiers, mostly from "Donbas" voluntary battalion, were in Chervonosilske village, after their fellow soldiers left, having decided either to break through or to surrender. The wounded were attended by a few paramedics from the "Donbas" battalion and an unarmed doctor. The survivors reported that during that day, a truck arrived in Chervonosilske.[168]

89. The commander, addressed by his subordinates as colonel, told wounded Ukrainian soldiers and medics to get into the truck and added "we do not fight with doctors".[169] At some point paramedics noticed that the doctor was not with them. Reportedly he remained in Chervonosilske. Several days later, armed men broke into the house where he was hiding, took him to the yard, beat him and then drove away with him. He has not been seen since, despite strenuous efforts of his relatives to establish his whereabouts.[170]

D. Inhuman or degrading treatment of persons *hors de combat*

90. On 29 and 30 August 2014, hundreds of Ukrainian soldiers were captured, including many who were wounded. During these two days, they were kept in makeshift collection points located in open fields near the zone of hostilities. The treatment of persons *hors de combat* was determined to a large extent by which individual unit held them. A number of Ukrainian soldiers reported to OHCHR that they were treated "decently", with some Russian commanders instructing their subordinates to treat captives humanely.[171] In one case, the commander intervened immediately to stop one of his elements who was guarding captives and was kicking a wounded Ukrainian soldier in the back and pointing a gun at him.[172]

91. At the same time, OHCHR documented a few cases where treatment of persons *hors de combat* could amount to degrading treatment and, at times, to torture. For example, some Ukrainian soldiers were forced to undress above the waist and lie face down or kneel on the hot ground or paved road for hours.[173] A Ukrainian soldier informed OHCHR that the men who interrogated him (whom he believed were Russian Federation soldiers) hit his wounds with their hands, inflicting severe pain.[174] Having been brought to various collection points, captured wounded soldiers would reportedly hardly receive water; some said they were given water in exchange for their watches.[175]

92. None of the parties to the conflict had enough emergency medical supplies to meet the needs of those in critical condition, including their own soldiers. The light painkillers and bandages available were insufficient to rescue those in a critical condition.[176] A captured Ukrainian colonel of the medical service with a national Red Cross ID was allowed to

[166] Ibidem.
[167] HRMMU interviews, 9, 29 and 30 November 2016.
[168] HRMMU interview, 11 November 2016.
[169] Ibidem.
[170] HRMMU interview, 29 November 2016.
[171] HRMMU interviews, 18 October and 3 November 2016.
[172] HRMMU interview, 30 October 2016.
[173] HRMMU interviews, 9 November and 10 December 2016.
[174] HRMMU interview, 5 April 2016.
[175] HRMMU interviews, 5 October, 9 November and 30 November 2016.
[176] HRMMU interviews, 23 September and 11 November 2016, and 29 June 2017.

provide first aid to the wounded soldiers.[177] OHCHR documented the death of four wounded Ukrainian soldiers while they were kept in makeshift collection points located in open fields near the hostilities, due to lack of urgent medical assistance: one soldier with a leg wound, two soldiers with stomach wounds, and one wounded in the throat.[178]

VI. Inhuman or degrading conditions of detention, torture and ill-treatment of Ukrainian soldiers

"I want them to be punished. We were kept and treated like slaves. I am happy I survived."

Ukrainian soldier tortured in Donetsk city

93. According to the General Prosecutor's Office of Ukraine, approximately 300 Ukrainian soldiers were captured during the Ilovaisk events.[179] Some were captured before 28 August 2014, but most on 29 and 30 August as they retreated from Ilovaisk; up to 10 were detained in early September after local residents found them in nearby fields.[180]

94. These soldiers were eventually transported to four main locations controlled by different armed groups: the seized police building in Snizhne town; a building allegedly located on Bortsiv Revolutsii Street, the seized buildings of the Academy of Internal Affairs, and the seized building of the regional department of the Security Service of Ukraine (SBU) in Donetsk city. In October 2014, some detainees were transferred back to Ilovaisk, where they were forced to work on the reconstruction of the town.[181]

95. The conditions in all detention facilities in Donetsk city and Snizhne were inhuman due to overcrowding, lack or absence of mattresses, absence of day light, lack of fresh air, inadequate sanitary conditions, insufficient and inadequate food, and lack of medical aid.

96. Armed groups used torture during the interrogation of the captured soldiers to extract information, to punish them for joining the volunteer battalions, or to try to compel them to join armed groups. The most common forms of torture were beatings, including with elements of sexual violence; mock executions; and other threats of physical violence. The most systematic torture was used in the seized building of the SBU regional department in Donetsk city.[182]

97. OHCHR documented cases of captured Ukrainian soldiers who were ill-treated or tortured en route to these detention facilities. For example, on 30 August 2014, a member of Ukrainian battalion "Kryvbas" was captured near Pokrovka, reportedly by three armed members of "Oplot" armed group. As he was escorted to the village, he was beaten with hands and guns and kicked, losing consciousness a few times. The victim was forced to undress above the waist and kneel. For a few hours he was interrogated while his hands were tied, and he was kicked in the head, resulting in a broken nose and several bruises on the face. Members of the armed groups also shot between his legs and around his head. They showed him a plastic bag containing human ears and said they belonged to a fellow soldier who had been shot dead. The perpetrators called the victim's wife and demanded a ransom. The victim was fed and left for the night in the basement of the house of a local resident. In the morning, he was transferred to the building of the former Academy of the Ministry of Internal Affairs in Donetsk city.[183]

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[177] HRMMU interviews, 30 September, 3, 4, 9 and 30 November 2016, and 26 January 2017.

[178] HRMMU interviews, 10 July, 23 September, 18 October, 4, 9, 10, 11 and 30 November 2016, 26 January and 29 June 2017.

[179] Letter from the Prosecutor General's Office of Ukraine to HRMMU, 22 June 2017.

[180] HRMMU meeting, 13 July 2017.

[181] HRMMU interviews, 18 November 2014, 4 and 21 April, 14 September, 18 and 21 October, 5, 9, 18 and 30 November and 10 December 2016, and 23 May 2017.

[182] Ibidem.

[183] HRMMU interview, 11 September 2016.

A. Detention facility in Snizhne

98. The detention facility in Snizhne was located in a seized police building, on 2 Militseiska Street, which also had a temporary detention facility ("ITT"). It was controlled by armed groups who wore chevrons and patches of "Novorossiia", "Oplot" and "Oplot Spetsnaz".[184] The commander in charge of the facility seemed to be a man with the call sign Kent. Other armed groups' members that were there as guards went by call signs Diadia Fiodor and Doctor.

99. According to witnesses, some 200 Ukrainian soldiers were detained in this facility from the end of August 2014 to the end of October 2014: mainly members of the 51st and 55th brigades of the Ukrainian Armed Forces, and of volunteer battalions "Dnipro-2" and "Kryvbas".[185]

100. OHCHR interviewed former detainees held in Snizhe, who reported that they were captured in combat south of Ilovaisk on 24 and 25 August 2014 by the Pskov Airborne division of the Russian Armed Forces.[186] For example, a member of the Ukrainian volunteer battalion "Dnipro" told OHCHR that his unit was captured on 24 August 2014, near Osykove, by a well-organized military unit, with the commander referred to by others as "starshyna".[187] On 25 August 2014, these Ukrainian soldiers were handcuffed with plastic straps and loaded onto trucks. They arrived at what seemed like a huge military camp with many tents busy with activity, and were informed that they were in Taganrog, in the Russian Federation. They stated that another group of approximately 40 captured Ukrainian soldiers were already present in the camp. The captured soldiers were reportedly given Russian army food rations and water.[188] On 26 August 2014, this group of Ukrainian soldiers was delivered to the facility in Snizhne where some Ukrainian soldiers were already being detained and more brought the following days.[189]

101. According to witnesses, in Snizhne, the captured soldiers were divided into two groups: one comprised officers, another consisted of privates. The privates were kept in a garage, the roof of which was leaking. For the first few days, captured soldiers slept on the concrete floor until they were provided with some wooden planks. Other privates were placed in cells, with 30 to 32 individuals put in a cell designed to hold seven. Each detainee reportedly received a piece of bread and one cigarette per day.[190]

102. As for the officers, they were reportedly forced into a pit near the building, and were interrogated three times, each time by different interrogators. On 27 August 2014, 11 out of reportedly 200 officers were transferred to the seized building of the SBU regional department in Donetsk city. The others remained in Snizhne and were moved from the pit to cells. Six persons were placed in each cell, intended to accommodate two people.[191]

103. While deprived of their liberty, Ukrainian soldiers were reportedly subjected to threats of physical violence. They perceived these as being imminent, which in itself may amount to torture.[192] Several times, detainees were forcibly awakened at night and made to

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[184] HRMMU interviews, 21 April, 18 October and 10 December 2016.
[185] HRMMU interview, 4 April 2016.
[186] HRMMU interviews, 21 April, 18 October and 21 December 2016.
[187] Rank of company sergeant major in the Russian Federation Military.
[188] HRMMU interviews, 18 October and 10 December 2016.
[189] Ibidem.
[190] HRMMU interviews, 4 April and 18 October 2016.
[191] HRMMU interviews, 4 April and 10 December 2016.
[192] The simple threat of the occurrence of violence is prohibited by Article 5 of the American Convention on Human Rights when it is sufficiently real and imminent, may constitute in itself a transgression of the norm dealt with (Inter-American Court of Human Rights, *Tibi v. Ecuador*, 7 September 2004. Series C No. 114, par. 147; see also *Baldeón-García v. Peru*.; in the same sense, European Court of Human Rights, Soering v. United Kingdom, 7 July 1989, Series A Vol. 161, par. 111; and Human Rights Committee, *Miguel Angel Estrella v. Uruguay* (74/1980), 29 March 1983, paras. 8(3) and 10. Moreover, the imminent and credible nature of a threat of torture or physical violence is what comprises severe mental suffering, which can be torture in and of itself (Inter-American Court of

stand in line outside. They were told they would be shot, with shots fired at their feet on the ground. They were also punched, kicked and beaten with rifle butts.[193] When not being subjected to such physical violence, detainees reported being threatened with further violent acts towards them. One detainee was threatened with having his ear cut off and being shot in the stomach.[194] Another was told his eyes would be taken out.[195] A further was told a grenade would be thrown into his cell.[196] Such violations seem to have taken place when there was no supervision by commanders of the armed groups.

104. According to witnesses, there were approximately 30 wounded Ukrainian soldiers held in Snizhne from August to October 2014. An armed group member call sign 017 allowed one of the detainees, a surgeon, to operate on wounded soldiers, and provided him with surgical supplies and bandages.[197]

105. Every day, except on Sundays, the detainees were forced to load boxes of ammunition or to clean the debris of ruined buildings without any personal protection equipment.[198] They were usually escorted by one or two adult men and two or three that reportedly looked to be 16-17 years old, all armed with guns or machine guns. During that time, armed groups' members would beat the detainees and threaten to shoot them. Local residents reportedly threw stones at the detainees, accusing them of "destroying their homes". Detainees who could work received larger food portions of soup or porridge twice per day.[199]

106. Three Ukrainian soldiers reported[200] that during their detention in Snizhne, they witnessed the killing of a local civilian, allegedly accused of looting by the armed groups. According to these witnesses, the civilian was kept in the open cabin of a vehicle parked in the yard of the ITT for more than a week. His hands were handcuffed to handles above the doors. His body was blue and his back was severely injured. He was denied food, water and medical aid. The witnesses heard his screams for days until he reportedly died on 13 September 2014. According to the witnesses, members of the armed groups put his body into a black plastic bag and took it away.[201]

107. On 13 September 2014, the commander of armed groups in this detention facility (Kent) read out a list of 73 soldiers to be released the following day at one of the checkpoints on the contact line. They were exchanged for 65 members of the armed groups who had been detained by the Government over the course of the conflict.[202] On 14 September 2014, some detainees were transferred to the detention facility in the seized SBU building in Donetsk city from where most were released the same day. The other detainees held in Snizhne were transported to Donetsk city on 29 October 2014 and released on 31 October 2014.[203]

Human Rights, *Baldeón-García v. Peru*. 6 April 2006. Series C No. 147, par. 119; see also *Maritza Urrutia v. Guatemala*. 27 November 2003. Series C, No. 103, para. 92).

193 HRMMU interview, 30 November 2016, and victim's written testimony dated 28 March 2017.

194 HRMMU interview, 21 April 2016.

195 Ibidem.

196 HRMMU interview, 4 April 2016.

197 HRMMU interview, 19 July 2017.

198 Rule 95 of customary international humanitarian law prohibits that detainees be involved in the work that has a "direct connection with the operations of the war". In the context of international armed conflict, the Third Geneva Convention provides that "unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature". In the context of non-international armed conflict, Additional Protocol II provides that persons who are deprived of their liberty for reasons related to the armed conflict "shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population".

199 HRMMU interviews, 4 and 21 April 2016.

200 HRMMU interview, 21 April 2016.

201 For more details on this case, see OHCHR report on 'Accountability for killings in Ukraine from January 2014 to May 2016', paras. 96-97.

202 Written testimony of a victim sent to HRMMU, 30 March 2017.

203 HRMMU interview, 4 April and 18 October 2016.

B. Detention facilities in Donetsk city

Seized building of the Academy of the Ministry of Internal Affairs

108. Interviews conducted by OHCHR suggest that some Ukrainian soldiers captured south of Ilovaisk between 28 and 30 August 2014 were brought to the seized building of the Academy of the Ministry of Internal Affairs of Ukraine in Donetsk city. The facility was run by a local armed group bearing the flag of the 'Donetsk people's republic' on their chevrons. At least 40 soldiers from the 93rd and 52nd brigades of the Ukrainian Armed Forces, as well as members of the "Donbas" battalion, were reportedly held in this facility.[204]

109. On 31 August 2014, some 30 members of the Ukrainian battalion "Kryvbas" were captured near Novokaterynivka village. They were loaded into a truck and transferred to the seized building of the Academy in Donetsk, reportedly following an order given by a commander, call sign Grek who, according to witnesses, had the ID of the Russian special police regiment "SOBR".[205]

110. In another case, a member of "Kryvbas" battalion captured by two members of "Oplot" armed group around Pokrovka, on 30 August 2014, was brought to this facility on 31 August 2014. He spent the first week in a basement with approximately six other Ukrainian soldiers and a local civilian man who was held there for a few weeks as a "disciplinary measure".[206] They slept on cardboard on the floor. After a week, the detainees held in the basement were moved to the former armoury room, which was twice smaller than the basement. Interviewed victims reported that some forty other Ukrainian soldiers had been already held there, in cramped conditions.[207]

111. According to the victims, they were not beaten in this facility and were provided with food and water. Every day, they were forced to work unloading and moving ammunition at a damaged factory. The interviewees stressed that it was extremely dangerous, as anything could detonate at any moment. Reportedly, all those held in this facility were released by mid-September 2014.[208]

Building allegedly located on Bortsiv Revolyutsii Street

112. On 30 August 2014, eight members of "Donbas" volunteer battalion and the 93rd brigade of the Ukrainian Armed Forces were captured near Chervonosilske. After several hours, they were handed over to armed men with chevrons reading "Cossacks' Union, region of the Don Army". The Ukrainian soldiers were loaded onto trucks and delivered to a one-storey building allegedly located on Bortsiv Revolyutsii Street, in Donetsk city. Wounded soldiers were provided with medical aid.[209]

113. For two days, six members of "Donbas" battalion were kept in a shed and slept on wooden trays. They were then moved to the basement of the building where they were kept together with 15-20 soldiers from "Kryvbas" battalion and two from "Donbas" battalion. Several times, armed group members came to the basement with knives and threatened to cut the detainees. One member of the "Donbas" battalion was taken out of the basement and beaten. Other detainees heard him screaming and said that his body was bruised when he returned.[210]

114. On 5 and 6 September 2014, two detainees were taken from the basement and allowed to cook some food. There, from a distance of 15-20 metres, they saw the guards bringing 10 members of the "Kryvbas" battalion out of the basement and lining them up near the building. The commander of the armed group, call sign Batya, became angry and began firing under their feet and above their heads. One bullet ricocheted off the ground

[204] HRMMU interviews, 21 October and 9 November 2016.
[205] HRMMU interview, 21 October 2016.
[206] HRMMU interview, 9 November 2016.
[207] HRMMU interviews (two individuals), 9 November 2016.
[208] HRMMU interviews, 21 October and 9 November 2016.
[209] HRMMU interview, 5 November 2016.
[210] Ibidem.

and hit one of the detainees in the thigh. When he fell on the ground screaming with pain, Batya told him that he would be provided with medical aid only if he gunned down one of his fellow soldiers. The guards hit him several times all over his body; however, a female doctor stopped them and provided the victim with medical aid. He was told to return to the line, and Batya continued shooting from his pistol into the ground or air around the soldiers. Then the chief guard of the facility, call sign Sviatoi, brought the two witnesses back to the basement. They continued hearing gunshots being fired for another hour. The interviewee did not see these 10 "Kryvbas" soldiers again. On 7 September 2014, most of the Ukrainian soldiers held in this facility were exchanged.[211]

Seized building of Donetsk regional SBU department

115. The seized building of the Donetsk regional SBU department, located on 62 Shchorsa Street, in Donetsk city, was used by armed groups as another detention facility. The commander in charge of the facility had the call sign Adrenalin. The guards were mainly from the "Oplot" battalion of armed groups.[212]

116. On 31 August 2014, 109 volunteer battalions members, mostly from "Donbas", and elements of the Ukrainian Armed Forces who had been captured around Ilovaisk were transported on trucks to the seized SBU building in Donetsk. There, in the courtyard, they were forced to line up and partially undress. The armed groups' members ordered them to put their heads down and allowed a LifeNews[213] journalist to film the detainees.[214] A few dozen civilians (men, women and children) were brought to the yard. Pointing at the detainees, the armed groups' members told the civilians that they [battalion members] were "fascists" and "were killing the civilians and destroying their homes". In response, the crowd of civilians started mobbing the battalion members, spitting into their faces. The detainees found this to be particularly humiliating and degrading.[215]

117. The detainees were forced inside the building where the conditions of detention were inhumane and may amount to ill-treatment.[216] There, approximately 60 to 70 battalion members were held in a basement measuring three to four metres by 10 metres. The basement had no fresh air, day light, or running water. Buckets served as toilets in a small room. Many slept on the concrete floor.[217] Members of the Ukrainian Armed Forces were kept on the ground floor, in a former archive, sleeping on cardboard arranged over six metal rack shelves stacked from floor to ceiling. Three times a day, the detainees were given access to the toilet facilities – one minute for each. During this minute, they were also allowed to fill plastic bottles with water.[218]

118. Food was insufficient and inadequate, and the detainees became malnourished, leading to regular bouts of fainting. Detainees were given a loaf of bread per day to be divided between 10 soldiers, and a cup of soup or porridge two times per day. Reportedly, armed groups' members sometimes put machine oil into the soup or sand into the porridge, rendering it inedible. During four months of detention, most lost an average of 10 kilograms, some up to 30 kilograms. None of the detainees received treatment for wounds they had, or diseases they contracted, including tuberculosis.[219]

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211 Ibid.

212 HRMMU interview, 14 September 2016.

213 A Russian TV channel.

214 HRMMU interview, 11 October 2016.

215 HRMMU interview, 23 May 2017.

216 For examples of the accumulation of inadequate conditions reaching the threshold of inhuman treatment, see Communication No. 938/2000, *Siewpersaud et al v Trinidad and Tobago*, Views adopted by the Human Rights Committee on 29 July 2004, paras. 2.3-2.5 and para. 6.3; Communication No. 798/1998, *Howell v Jamaica*, Views adopted by the Human Rights Committee on 21 October 2003, paras. 2.9 and 6.2.

217 HRMMU interviews, 14 September, 11 October and 4 November 2016, and 23 May 2017.

218 HRMMU interviews, 18 November 2014 and 30 November 2016.

219 HRMMU interviews, 4 April, 23 May, 14 September, 11 and 12 October, and 4, 18 and .and 12ember 2016 November 2016 nting to ill-treatment. degrading.iolence, mock executions, threats.ning volunteer battalions o30 November 2016, and 27 June 2017.

119. All the soldiers were interrogated on the first day they were brought in, and each was questioned a few times on later days. Many were interrogated in a "torture room" near the archive; other detainees could hear their screams. Armed groups used torture during interrogations of Ukrainian soldiers to extract information or a confession, or to punish them for joining a battalion. According to the victims, the group of interrogators usually comprised two ex-officers of the Donetsk SBU working with the 'Donetsk people's republic', and were led by an officer who was treated as a senior official and wore a military uniform bearing the Russian Federation flag.[220]

120. For example, a member of the "Donbas" battalion recalled being interrogated twice in early September 2014, and believes the interrogators were former SBU and Russian Federation intelligence officers. According to him, they were well-prepared and, by the second interrogation, had his detailed biography, including all personal information (family, place of residence, etc.). He was beaten with batons and kicked during both interrogations, and from one session, the beating was so severe to his legs, knees, coccyx and kidneys, that he could not walk by himself for three days. He was also forced to face a wall while his interrogators shot around his arms and legs with an air gun.[221]

121. Another "Donbas" battalion member was interrogated four times and each time subjected to torture. An armed group member with the call sign Baton kicked punched and hit him with a truncheon all over his body, particularly his heels, shanks and thighs, causing severe pain. Unlike most captured soldiers, who were released by the end of 2014, this victim was released in February 2015.[222]

122. Based on the interviews with the victims, it appears that the battalion members from Donetsk, Luhansk or Kharkiv regions were beaten more severely than others when interrogated, because armed groups deemed them as "traitors".[223] Soldiers with tattoos in the form of a trident or who spoke Ukrainian were also beaten more.[224] For example, a member of "Donbas" battalion was interrogated two or three times and tortured by being forced to face a wall while being punched, kicked and hit with a truncheon in his back and legs. On 15 and 16 September 2014, after the victim revealed tattoos of the coat of arms and flag of Ukraine on his chest near his heart, guards with the call signs Adrenalin, Baton and Molchun punched him in the head and jaw, and struck his calves, buttocks and back with a truncheon. Afterwards, the victim was forced to do 1,000 squats.[225]

123. n addition to guards, other armed group members also had access to the detainees. Often drunk, members of armed groups would enter the basement and randomly beat any Ukrainian soldier, especially at night when the commanders were not present. Detainees were also regularly taken outside in groups of five to 10, forced to do 500 squats, and dig trenches or graves. They were beaten with sticks on their legs, subjected to mock executions or threatened to be sent to Donetsk airport to be used as human shields, or to Rostov or Kolyma, in the Russian Federation. After one such random beating, one detainee had a broken arm and another urinated blood.[226]

124. The detainees were gradually released in small groups between September and December 2014. Interviews conducted by OHCHR suggest that as of 31 December 2014, approximately nine Ukrainian soldiers captured in Ilovaisk remained detained in the seized building of the Donetsk SBU. Some 10 remained in detention till the end of summer 2015 and then released.[227] One soldier captured around Ilovaisk remained in detention by armed groups until he was released on 27 December 2017.

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220 HRMMU interviews, 11 October 2016 and 23 May 2017.
221 HRMMU interview, 23 May 2017.
222 HRMMU interview, 4 November 2016.
223 HRMMU interviews, 11 October 2016 and 23 May 2017.
224 HRMMU interview, 18 November 2014.
225 HRMMU interview, 14 September 2016.
226 HRMMU interviews, 11 October and 30 November 2016, and 23 May 2017.
227 HRMMU interview, 14 September 2016.

C. Detention facility in Ilovaisk

125. In mid-October 2014, 68 Ukrainian soldiers[228] were transferred from Donetsk city to Ilovaisk where they were forced to clean up debris, collect unexploded ordnance,[229] and reconstruct houses and multi-storey buildings – all without any protection or security equipment.[230]

126. The detention conditions in Ilovaisk were much better in comparison with the seized SBU building in Donetsk city. In Ilovaisk, detainees were held in the large military headquarters with access to running water. They were sufficiently fed and could cook for themselves in the morning and evening. Local residents brought them food and warm clothes. From there, the captured soldiers could contact their families for the first time. The Ukrainian soldiers were guarded by the "Somali battalion" of the armed groups[231] and the head of the detention facility had the call sign Angel.[232]

127. Around 20 October 2014, four Ukrainian soldiers originally from Zaporizhzhia were released, allegedly through negotiations led by an Afghanistan war veterans association, leaving 64 detainees in the facility. On 26 December 2014, the remaining 64 Ukrainian soldiers were transported by military trucks from Ilovaisk to Donetsk. They were then put on buses together with 14 Ukrainian soldiers who had been detained in the seized SBU building since August 2014, and taken to "neutral territory" north of Kostiantynivka. They were released simultaneously with members of the armed groups who had been detained by the Government.[233]

VII. Accountability for human rights violations and abuses and international humanitarian law violations during the Ilovaisk events

"I hope that eventually those who committed violations here will be finally held responsible or at least will be condemned by the international community."

A resident of Mnohopillia village

128. Four years after the Ilovaisk events, limited steps have been taken by the parties to the conflict to investigate the allegations of human rights violations and abuses and international humanitarian law violations, particularly those committed against civilians.

129. On 4 September 2014, the Verkhovna Rada (the Parliament) of Ukraine established a Temporary Investigative Commission into the Ilovaisk events,[234] which published an interim report on 20 October 2014. It only focused, however, upon military and political aspects of the operation. The full report was never released due to the early termination of the powers of the Commission by the Parliament.[235] In parallel, on 4 September 2014, the Prosecutor General's Office launched its own investigation into military aspects of the

[228] All, apart from the officers of the Ukrainian Armed Forces and the battalion members who were deemed "unreliable".

[229] Rule 95 of customary international humanitarian law prohibits that detainees be involved in the work that has a "direct connection with the operations of the war". The Third Geneva Convention provides that "unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature". Additional Protocol II provides that persons who are deprived of their liberty for reasons related to the armed conflict "shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population".

[230] HRMMU interview, 23 May 2017.

[231] Commander Givi – Mykhailo Tolstykh, died in 2017.

[232] HRMMU interview, 11 October 2016.

[233] On 26 December 2014, armed groups released 150 Ukrainian soldiers (including 78 soldiers captured around Ilovaisk), while the Government of Ukraine released 225 members of the armed groups.

[234] See footnote 51 of this report for more details.

[235] Letter of the Verkhovna Rada of Ukraine to HRMMU, dated 26 June 2017.

Ilovaisk operation. The results of this investigation were made public on 14 August 2017,[236] and were shared with the Office of the Prosecutor of the International Criminal Court.

130. The Prosecutor General's Office of Ukraine informed OHCHR that as of August 2017, there were no separate criminal proceedings investigating human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events. Some violations and abuses committed against Ukrainian soldiers in Ilovaisk, such as summary executions, torture and ill-treatment, are investigated as an element of two complex criminal proceedings that cover the whole period of the armed conflict in the east of Ukraine.[237] One criminal proceeding was launched against members of the armed groups of the 'Donetsk people's republic' and 'Luhansk people's republic' for "wide-scale and systematic violations of laws and customs of war" committed against civilians and captured soldiers in the context of the armed conflict in the east of Ukraine.[238] A second criminal proceeding was launched against officials and members of the Armed Forces of the Russian Federation for "launching and waging aggressive war against Ukraine which caused death of people and other grave consequences".[239]

131. Under the first proceeding, the investigation established the identity of one armed group member who, in the seized SBU building of Donetsk, guarded, ill-treated and tortured Ukrainian soldiers captured in Ilovaisk. An indictment was sent to court requesting a trial *in absentia* against this individual. Another member of an armed group was convicted on 1 June 2017[240] for guarding, ill-treating and torturing Ukrainian soldiers in the seized SBU building of Donetsk, on charges of creation of a terrorist group (article 258-3), planning, preparation and waging of an aggressive war (article 437) and violation of laws and customs of war (article 438), and sentenced to 10 years of imprisonment.[241]

132. Under the second criminal proceeding, charges have been brought against the First Deputy Chief of the General Staff of the Armed Forces of the Russian Federation, but the investigation has been suspended, as the suspect is at large.

133. The conduct of the Ukrainian forces is not within the scope of either investigation. Most of the human rights violations allegedly committed by Ukrainian forces against civilians described in this report have not been investigated. According to the Prosecutor General's Office of Ukraine, it is due to the fact that the alleged victims did not complain to the relevant State authorities. In the ongoing criminal proceedings, there is also little or no focus on the impact of the hostilities, including those in and around Ilovaisk in August 2014, on the civilian population. The lack of progress in investigating violations and abuses committed against civilians may be partially attributed to the fact that the Government of Ukraine does

[236] The official website of the Prosecutor General's Office of Ukraine, 14 August 2017. Available at: http://www. gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=213793 (lat accessed on 28 September 2017.

[237] Letter of the Prosecutor General's Office of Ukraine to HRMMU, dated 22 June 2017.

[238] The investigation is carried out under the following articles of the Criminal Code of Ukraine: 115 (murder), 146 (illegal deprivation of liberty or abduction), 258 (terrorist act), 258-3 (creation of a terrorist group or organization), 438 (violation of laws and customs of war).

[239] The investigation is carried out under the following articles of the Criminal Code of Ukraine: 110 (trespass against territorial integrity), 113 (sabotage), 114 (espionage), 258 (terrorist act), 258-3 (creation of a terrorist group or organization), 258-5 (financing of terrorism), 260 (creation of illegal armed formations), 263 (unlawful handling of weapons, ammunition or explosives), 402 (disobedience), 403 (failure to comply with orders), 407 (absence without leave from a military unit or place of service), 408 (desertion), 425 (neglect of duty in military service), 437 (planning, preparation and waging of an aggressive war), 426 (omissions of military authorities), 447 (mercenarism).

[240] Verdict of Sloviansk town-district court of Donetsk region, 1 June 2017 (available at: http://reyestr.court.gov.ua/ Review/ 66885637).

[241] According to the Office of the Prosecutor General of Ukraine, this overall proceeding covers the period since the beginning of the conflict till present. As of 25 June 2018, in total (not only linked to Ilovaisk events), 99 individuals, including 68 citizens of the Russian Federation, have been brought to criminal liability "for actions related to staging and carrying out an aggressive war against Ukraine, undermining basis of the national security of Ukraine, violations of laws and customs of war". Of them: 11 individuals were charged with violations of laws and customs of war.

not have access to the territory where they were committed. Furthermore, disruption of postal services between the Government-controlled and armed group-controlled territory, as well as arduous procedures to cross the contact line, make it difficult for civilians living in the territory controlled by the armed groups to report allegations of human rights violations and abuses and international humanitarian law violations to Government agencies. Access to civilians in territory controlled by armed groups is particularly important for the investigation of alleged violations committed by Ukrainian forces. These constraints, however, do not exempt the State of Ukraine from its duty to investigate allegations of human rights violations and abuses and international humanitarian law violations promptly and effectively to ensure that victims have access to justice and effective remedy.[242]

134. National legislation is yet to be adapted to the reality of armed conflict. The Criminal Code does not criminalize "war crimes" or "crimes against humanity" as such. Furthermore, Criminal Code provisions that could be relevant in the context of an armed conflict are very rarely, if ever, used in criminal proceedings; such as violence against population in an operational zone (article 433), ill-treatment of prisoners of war (article 434), or criminal offences against internationally protected persons and institutions (article 444). In addition, the Criminal Code foresees criminal responsibility for voluntarily rendering oneself prisoner of war (article 430), which may deter victims and witnesses to testify, particularly in the context of the Ilovaisk events.

135. Finally, the Criminal Code of Ukraine mainly focuses on individual criminal responsibility for physical commission of a crime or aiding, abetting or otherwise assisting the commission of the crime. Articles 426 (omission of military authority – failure to prevent or refer a case to investigation, or other failure to act by a person in authority which caused significant harm) and 426-1 (actions in excess of military authority) also foresee command responsibility, which includes elements of omission liability, and is of particular importance in the context of armed conflicts and the incidents described in this report. These articles however are mainly applied in cases when commanders commit crimes against their subordinates, but rarely regarding conduct against civilians.[243]

VIII. Conclusions and recommendations

136. Over four years of armed conflict in Ukraine have had a devastating impact on the lives of individuals and the human rights situation in the country. The Ilovaisk events of August 2014 are emblematic of human rights violations and abuses and international humanitarian law violations that have been repeatedly committed in the conflict in the east of Ukraine: shelling of residential areas resulting in civilian casualties, killings of civilians and other protected persons, unlawful detentions, enforced disappearances, and torture.

137. Cases documented by OHCHR and analyzed in this report suggest that during the hostilities in Ilovaisk, all parties to the conflict committed serious human rights violations and abuses, as well as international humanitarian law violations, with some possibly amounting to war crimes. The Ilovaisk events have left deep physical and emotional scars on the civilian population of the town and its vicinities, especially on those who were deprived of their liberty and subjected to torture and ill-treatment, their relatives, and those who lost and continue to search for loved ones.

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[242] While there have been no proceedings initiated into violations committed against civilians in context of the Ilovaisk events, according to the Office of the Prosecutor General of Ukraine, from 1 April 2014 to 31 May 2018, military prosecutors have been investigating 169 criminal cases of crimes perpetrated by elements of Ukrainian forces against civilians in the 'anti-terrorist operation' zone, including 45 cases of killings, causing bodily harm, torture or illegal deprivation of liberty; 3 rapes; 34 crimes related to property (thefts, robbery, armed assault or illegal appropriation of a vehicle), and 86 other crimes. Besides, the National Police have investigated 417 criminal cases (112 cases of murder, causing bodily harm, torture or illegal deprivation of liberty), 4 rapes, 160 crimes related to property (thefts, robbery, armed assault or illegal appropriation of a vehicle) and 138 other crimes.

[243] HRMMU meeting with Military Prosecutors, 2 June 2016.

138. In all its previous reports on the human rights situation in Ukraine, OHCHR has underscored the prevailing impunity for the human rights violations and abuses committed in the context of the armed conflict in Ukraine, which applies to the Ilovaisk events. While recognizing the efforts made by the Government of Ukraine to date, OHCHR is concerned that the investigation undertaken thus far does not reflect the full scale of human rights violations and abuses and international humanitarian law violations committed in Ilovaisk in August 2014, particularly against civilians.

139. Through impartially collecting and recording victim and witness accounts of human rights violations and abuses and international humanitarian law violations that occurred during the Ilovaisk events in August 2014, OHCHR seeks to contribute to realizing the right of victims, their relatives, communities and society as a whole to know the truth. This imperative is closely linked to access to justice, the right to obtain effective remedy and reparation. OHCHR has marshalled a reliable body of information, which is consistent with, and supported by numerous and credible sources, in order to trigger and facilitate a full-fledged criminal investigation by appropriate national and/or international judicial authorities into the events in Ilovaisk.

140. OHCHR recalls that accountability and access to justice are an essential element to foster long lasting peace and reconciliation. It is of grave concern that while some relevant draft laws have been developed,[244] more than four years after the beginning of the armed conflict, no national mechanism has been put in place by the Government of Ukraine to ensure that all victims receive prompt and adequate access to an effective remedy, including comprehensive rehabilitation, restitution, compensation, satisfaction and guarantees of non-recurrence. This particularly concerns civilian victims of the conflict, especially those injured and the families of those killed.[245]

141. The below recommendations include immediate and medium-term measures to prevent further violations and abuses of the rights to life, liberty, security and physical integrity, and to ensure that all perpetrators and those responsible for such acts are held accountable. Some particularly relevant recommendations made in the previous OHCHR public reports on the human rights situation in Ukraine are reiterated, as they remain to be implemented.

142. Recommendations to the authorities of Ukraine

(a) Government and Parliament to continue the process started in 2016[246] of ratifying the Rome Statute and amending the Criminal Code of Ukraine, which would allow for the domestic prosecution of international crimes.

(b) Law enforcement agencies to investigate effectively, promptly, thoroughly and impartially all allegations of human rights violations and abuses with due regard to the rights of the victims, regardless of the affiliation of the alleged perpetrator(s) and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

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[244] See OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2018, paras. 32-33.

[245] The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law require that States provide compensation for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (*a*) Physical or mental harm; (*b*) Lost opportunities, including employment, education and social benefits; (*c*) Material damages and loss of earnings, including loss of earning potential; (*d*) Moral damage; (*e*) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

[246] To solve the issue of complementarity of ICC to the national justice system, on 2 June 2016 Parliament amended article 124 of the Constitution of Ukraine. The amendments enter into force on 30 June 2019. The package of documents to enable ratification of the Rome Statute was developed and submitted to the President of Ukraine.

(c) Law enforcement agencies to ensure that the investigation of conflict-related cases of torture, ill-treatment, summary executions and killings is based on international standards and practice (e.g. Istanbul Protocol[247] and the Minnesota Protocol),[248] including through training relevant staff;

(d) Government to provide alleged victims of a human rights or humanitarian law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation;

(e) In the context of the Minsk agreements,[249] the Government to commit not to grant amnesty to persons suspected, accused or convicted of international crimes, in particular war crimes, crimes against humanity or gross violations of human rights, recalling that amnesties are impermissible if they interfere with victims' right to an effective remedy, including reparation, or restrict victims' and societies' right to know the truth about violations of human rights and international humanitarian law;

(f) Parliament to reconvene the Temporary Investigative Commission, or convene another effective, independent and adequately empowered commission, to complete the investigation into the events that occurred in Ilovaisk and issue a public report on its findings;

(g) Government to ensure that documented human rights violations and abuses and international humanitarian law violations are comprehensively addressed in any future transitional justice processes, encompassing the full range of judicial and non-judicial measures, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof, as well as comprehensive national consultations, particularly with those affected by human rights violations and abuses;

(h) Government to ensure that judges, lawyers and other justice professionals hearing conflict-related cases are fully protected from threats, intimidation and other external pressures that seek to challenge and threaten their independence and impartiality;

(i) Cabinet of Ministers[250] to ensure the development and provision of timely, non-discriminatory and comprehensive assistance to all conflict-affected individuals, particularly injured civilians and victims of torture, including medical, psychological and legal services, livelihood support, and other multi-sectoral services, taking into account the specific needs of persons with disabilities.

143. To all parties involved in the hostilities in Donetsk and Luhansk regions, including armed groups of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic':

(a) Adhere to the ceasefire and implement all other commitments made under the Minsk agreements, in particular regarding withdrawal of weapons and disengagement of forces and hardware;

(b) In order to ensure greater protection of the civilian population and critical civilian infrastructure, cease the use of mortars and other indirect and imprecise weapons in civilian-populated areas, and refrain from placing soldiers, fighters or other military objects in civilian populated areas;

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[247] The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel,Inhuman or Degrading Treatment or Punishment. http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf

[248] The Minnesota Protocol on the Investigation of Potentially Unlawful Death, http://www.ohchr.org/Documents/Issues/Executions/MinnesotaProtocolInvestigationPotentiallyUnlawfulDeath2016.pdf

[249] The Minsk Protocol of 5 September 2014, Minsk Memorandum of 19 September 2014 and the Package of Measures for the Implementation of the Minsk Agreements of 12 February 2015.

[250] OHCHR understands that the key ministries involved would be the Ministry of Social Policy, the Ministry of Health, and the Ministry of Justice; however some involvement of other ministries and State bodies may be required.

(c) Ensure unimpeded access to OHCHR and other international independent observers to all places of deprivation of liberty;

(d) Adopt all necessary and reasonable measures to prevent and address human rights abuses by persons taking active part in hostilities:

- ensure that all such persons are properly trained on the key principles of international humanitarian law (distinction, proportionality and precaution) and norms and standards of international human rights law, especially the prohibition of torture;
- ensure that all forces are subject to adequate command and control;
- implement and publicize a system of reporting and investigating alleged human rights violations and abuses and international humanitarian law violations, that includes adequate protections for whistle-blowers;
- remove any individuals, including senior commanders, implicated in serious human rights violations and abuses or breaches of international humanitarian law from their ranks;

(e) Extend full cooperation to official investigations into human rights violations and abuses related to the conflict in the east of Ukraine, and ensure that individuals found to be responsible are held accountable before an independent judiciary.

(f) Allow unhindered access for humanitarian assistance and human rights monitoring and investigations in all parts of the territory under their control;

(g) Make public any known information on the whereabouts and fate of persons suspected of being subjected to enforced disappearance and missing persons, including the location of any graves, to ease the suffering of the victims' families and assist in identifying and holding accountable the perpetrators.

144. To the international community

(a) Use all diplomatic channels to press all parties involved in the conflict to end all hostilities;

(b) Emphasize the detrimental effect the conflict has had on the human rights situation, and call on the parties to strictly adhere to their commitments under the Minsk agreements, including an immediate and full ceasefire and the withdrawal of heavy weapons;

(c) Remind all parties to adhere to norms and standards of international human rights law and international humanitarian law obligations and principles, and in particular to guarantee the protection of civilians;

(d) Support all relevant actors in increasing their knowledge, understanding and use of international humanitarian law principles, as well as provisions of international human rights law;

(e) Urge all parties involved in the conflict to ensure thorough and effective investigations into all allegations of human rights violations and abuses, regardless of perpetrators' affiliation, as an essential element for sustainable peace and reconciliation;

(f) Assist the law enforcement agencies of Ukraine in developing their capacity to document and investigate human rights violations and abuses linked to conflict based on international standards, including Istanbul Protocol and the Minnesota Protocol; develop multi-level training sessions, adapted to the Ukrainian context and legislation, ranging from working-level professional staff (police, investigators, judges) to high-ranking officials and administrative staff;

(g) Provide assistance in the framework of the judicial reform to enable the judiciary to increase its capacity to address conflict-related cases;

(h) Support the Government of Ukraine in developing post-conflict mechanisms, including transitional justice processes, where applicable, that would encompass the full

range of judicial and non-judicial measures, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof, as well as comprehensive national consultations, particularly with those affected by human rights violations and abuses;

(i) Support human rights-centred confidence-building measures, human rights protection work, human rights monitoring and investigation, and activities aimed at conflict resolution on both sides of the contact line.